**Item 14 of Contract Information (South Australia)**

**Extra Contract Terms**

In the Contract Information, new items are added as follows:

|  |  |
| --- | --- |
| **2A. Architect** | **Name:**  **Registration number:**  **Representative:**  **Address for notices:**  **Email:**  **Mobile:**  **Telephone:**  **Facsimile:** |
| **11A. Provisional Sums** | |  |  | | --- | --- | | Item | Estimated sum | |  |  | | Total |  | |
| **15. Security** (Clause 6A)  Are **we** to give security to **you:** | Yes  No  (*check box as applicable)* |
| **Your** nominated type of security: | Unconditional Guarantee  Retention  (*check box as applicable, if neither selected, cash retention is default)* |
| If cash retention is selected, percentage of **the price** for cash retention: | % of **the price**  (*if nothing stated, 5%)* |
| If unconditional guarantee is selected, **we** give 2 unconditional guarantees each of: | % of **the price**  (*if nothing stated, 2.5%)* |

|  |  |
| --- | --- |
| **16. Period for payment of certificates and for release of security** (Clause 5): | (*if nothing stated, 7 calendar days)* |

|  |  |
| --- | --- |
| **17. Public liability insurance** (Clause 31):  Are **you** or **we** required to take out and maintain public liability insurance: | **us**  **you**  (*if nothing stated,* ***us****)* |
| Amount of insurance for injury, illness, disease or death | $  (*if nothing stated, $20,000,000)* |
| Amount of excess for public liability insurance | $  (*if nothing stated, $1,000)* |

|  |  |
| --- | --- |
| **18. Contract works insurance** (Clause 31A):  Are **you** or **we** required to take out and maintain contract works insurance: | **us**  **you**  (*if nothing stated,* ***us****)* |
| Amount of insurance to cover fees of the **architect** and other consultants: | % of **the price**  (*if nothing stated, 10% of* ***the price****)* |
| Amount to cover demolition and cost of removal of debris: | % of **the price**  (*if nothing stated, 10% of* ***the price****)* |
| Amount of excess for contract works insurance | $  (*if nothing stated, $1,000)* |

|  |  |
| --- | --- |
| **19. Official Documents** (Clause 18A): |  |
| **Official Documents** required to begin **the work** but to be obtained by **us** |  |
| **Official Documents** required to complete **the work** but to be obtained by **you** |  |

|  |  |
| --- | --- |
| **20. Commissioning tests for practical completion** (Clause 25): |  |

|  |  |
| --- | --- |
| **21. Defects liability period for the work** (Clause 26): | months  (*if nothing stated, 12 months* |

|  |  |
| --- | --- |
| **22. Information to be included in a progress claim:**  (Clause 5.1) |  |

|  |  |
| --- | --- |
| **23. Items to be supplied by you for incorporation in the work** (Clause 19) |  |
| Items to be installed by **us** (and only the costs of installation are included in **the price**): |  |
| Items to be installed by **you** (and no allowance has been included in **the price** for supply and installation): |  |
| **24. Percentage on Provisional Sums and Prime Cost Items** (Clause 5A) |  |
|  |  |
| **25. Interest rate on overdue payments** (Clause 5B) |  |
|  |  |
| **26. Damages for delays** (Clause 12.11) | $ per calendar day |
|  |  |
| **27. Liquidated damages for late completion** | $ per calendar day |
|  |  |
|  |  |
| **28. Provisional sums**   |  |  | | --- | --- | |  |  | | |  |  | | --- | --- | | Item | Estimated sum | |  |  | | Total |  | |

New Schedules 1 and 2 are inserted after Clause 43, as set out in Attachment 1 to these Extra Contract Terms.

In Clause 1, new definitions are added as follows:

* '**architect**' means the person, partnership or company named in the Contract Information.
* '**Authorised Person**' has the meaning given in Clause 18A.3.
* **'business days'** meansany day other than a Saturday, Sunday or statutory public holiday in South Australia.
* **'Building Code'** means Volumes One and Two of the National Construction Code as in force as at the date of commencement of the Works.
* **'Cost of Building Work**' means the actual cost of the Works excluding any amounts for GST.
* '**Latent Condition**' has the meaning given in Clause 20.6.
* **'Necessary Work'** means all work including any temporary work necessary to complete the **work**.
* '**Official Document**' has the meaning given in Clause 18A.2.
* **'practical completion'** has the meaning given in Clause 25.1.
* '**Site Information**' has the meaning given in Clause 20.2.
* '**Valuable Item**' has the meaning given in Clause 20.7.
* **'Working days'** means Monday to Friday excluding statutory public holidays and rostered days off and recognised industry shut down periods in South Australia.

Clause 2.3 is deleted and replaced with "Not used".

New Clauses 2.5 to 2.8 are added as follows:

2.5 **We** must:

* begin **the work** within 10 **working days** after being given possession of **the site**;
* diligently carry out all **Necessary Work** and complete **the work** to the standard set out in **the contract documents**;
* keep **the site** and any area affected by **the work** clean and tidy at all times;
* comply with all instructions issued under this contract by the **architect**;
* obtain all **Official Documents** required under this contract to complete **the work**, and any shown in Item 19 of the Contract Information;
* comply with all other obligations under this contract;
* comply with all relevant legislation; and
* bring **the work** to **practical completion** in accordance with Clause 25.

2.6 If the relevant work health and safety legislation (**WHS legislation**) requires it, **we**:

* acknowledge that **you** have engaged and appointed **us** under the **WHS legislation** as the principal contractor for **the work**; and
* will discharge the responsibilities imposed on it as the principal contractor under the **WHS legislation**.

2.7 At any time after termination of **our** engagement, the **architect** may instruct **us** to remove all or some of its property from **the site**. **We** must comply within 10 **working days**, failing which **you** may remove the property identified in the **architect's** instruction and dispose of it. **You** must give notice in writing to **us** and the **architect** of the amount the property is disposed for. **You** must pay **us** the amount the property is disposed for, less the costs of removal and disposal.

2.8 If our engagement has been terminated under Clause 34:

* **we** must assign to **you** all of **our** rights under any subcontract relating to the supply of labour, services, materials or equipment for **the work** if directed to do so by the **architect**;
* **you** may contract with others to complete **the work**; and
* **you** may take possession of **the** **site** and exclude **us** from it.

New Clauses 3.5 and 3.6 are added as follows:

3.5 **The price** is a lump sum and **we** represent that **the price** allows for:

* everything reasonably required in accordance with this contract to complete **the work**;
* all provisional sum items in Item 28 of the Contract Information and prime cost items in Item 11 of the Contract Information;
* installation of any items shown in Item 23 of the Contract Information to be supplied by **you** and installed by **us**;
* rise and fall;
* all statutory taxes and charges applying 5 **business days** before the closing of tenders;
* import duties and tariffs on imported materials or equipment to be incorporated in or used in the completion of **the work** applying 5 **business days** before the closing date for tenders;
* exchange rates applying 5 **business days** before the closing date for tenders;
* relevant industrial awards and work place agreements, site allowances, building industry superannuation levies and long service leave levies; and
* GST.

3.6 **The** **price** does not include any items to be supplied and installed by **you** shown in Item 23 of the Contract Information or specifically identified elsewhere in **the contract documents**.

Clause 4 is deleted and replaced with "Not used".

Clause 5 is deleted and replaced with the following:

**5 Payment claims, interest**

5.1 **We** must give the **architect** a written claim for a progress payment each month (or such other dates or stages set out in Item 6 of the Contract Information). The claim must set out each of the following:

* the amount paid or to be paid for the **work** or stage completed to date;
* the amount paid or to be paid for, and details of, any **variations** made and other amounts paid or to be paid by the **you** under this contract;
* the sum of those amounts;
* payments that have already been made by **you**; and
* the total claimed, taking into account the payments already made.

5.2 The **architect** must assess a claim for a progress payment submitted by **us** following completion of a stage and issue to **us** and to **you** a certificate setting out any payment due within 10 **business days** after receiving a claim for a progress payment.

5.3 When assessing a claim for a progress payment the **architect** must take account of each of the following:

* any adjustments to **the price** since any previous assessment;
* whether or not the stage of completion set out in Item 6 of the Contract Information claimed to be completed has been completed;
* any claim by **you** for a set off of monies due under this contract;
* **your** entitlement to agreed damages, in accordance with Clause 12A, since any previous certificate, calculated up to the date of the certificate;
* any other matter to be taken into account in accordance with this contract;
* GST; and
* the amount of the deposit paid by **you**.

5.4 The certificate must:

* identify the amount of GST that has been included;
* identify the percentage of **the price**, as adjusted applicable to the amount certified for payment; and
* give any written reasons for any difference between the amount certified and the (GST exclusive) amount claimed.

5.5 If the **architect** reasonably needs additional information to assess the claim, the **architect** must promptly ask **us** for it.

5.6 On receiving a certificate from the **architect**, the party to be paid must deliver the certificate to the other party for payment. If the party to be paid is registered for GST, it must, at the same time, deliver a tax invoice equal in value to the certificate to the other party.

5.7 The amount stated as owing in any certificate must be paid within the number of days set out in Item 16 of the Contract Information.

5.8 The **architect** may issue a certificate for payment at any time up until the final certificate is issued.

5.9 Before **you** are obliged to make the first progress payment, **we** must:

* have in place the security by unconditional guarantee in accordance with Clause 6A(1);
* have in place the insurances in accordance with Clause 31 and 31A; and
* have given the **architect** the program in accordance with Clauses 6B(1) and 6B(3).

5.10 If the **architect** fails to issue a certificate on time **we** may issue a notice in writing to **you**, copied to the **architect**, requesting **you** to ensure that the **architect** issues the certificate within 5 **business days** after the date the notice is delivered.

5.11 If the **architect** fails to issue the certificate within 5 **business days** after the date the notice is delivered, **we** are entitled to payment of the full amount of the progress claim within 7 calendar days after the date the notice was delivered.

5.12 **We** are entitled to submit to the **architect** a final claim for payment when:

* all defects liability periods have ended;
* **we** have rectified all defects and finalised all incomplete work it became aware of by instruction from the **architect** or from **our** own observations during the defects liability period; and
* **the work** has been completed in accordance with this contract.

5.13 **Our** final claim must identify any GST included in the claim.

5.14 **We** must submit a final claim within 20 **business days** after receiving a written request to do so from the **architect**.

5.15 If **we** fail to comply with a written request made under Clause 5.14 the **architect** may determine the final claim.

5.16 After a final claim has been made under Clause 5.12 or is treated as having been made under Clause 5.16, **we** are not entitled to make any further claims under this contract.

5.17 The **architect** must promptly assess the final claim. If the **architect** reasonably needs additional information to do so, the **architect** may ask **us** for it. **We** must promptly give the **architect** any additional information the **architect** requests. The **architect** must, within a reasonable time (not exceeding 10 **business days**) after receiving the final claim (or the additional information if requested) issue to **us** and to **you** a final certificate setting out the amount due for payment.

5.18 The certificate must:

* identify the amount of GST that has been included;
* give written reasons for any difference between the (GST exclusive) amount certified and the (GST exclusive) amount claimed; and
* notify **you** of its obligation to release any remaining security under Clauses 6A.15 to 6A.17.

5.19 If **we** fail to give the **architect** any additional information the **architect** asks for within a reasonable time, the **architect** must promptly assess the claim on the basis of the information the **architect** has.

5.20 On receiving the final certificate from the **architect**, the party to be paid must deliver the final certificate to the other party for payment. If the party to be paid is registered for GST, it must, at the same time, deliver a tax invoice equal in value to the final certificate to the other party.

5.21 The amount stated as owing in the final certificate must be paid within the period shown in Item 16 of the Contract Information after delivery of the certificate and the tax invoice (if applicable).

5.22 The final certificate must state the **architect**'s assessment of all outstanding entitlements under this contract. The final certificate is evidence of the parties' entitlements under this contract and that **we** have performed our obligations under this contract subject to any matter already in dispute under Clause 35.

5.23 The written claim for a progress payment is not a tax invoice, but must identify any amount of GST that has been included in the claim. The claim must be supported by any information shown in Item 22 of the Contract Information and a declaration made by **us** that:

* all wages and other entitlements including building industry superannuation and long service leave levies due at the date of the declaration have been paid to or on behalf of all **our** employees;
* all monies due to subcontractors at the date of the declaration have been paid; and
* all insurances required to be maintained by **us** are in force.

5.24 The fact that **you** or a financier has made a progress payment does not prevent **you** from later claiming that a stage is incomplete. This condition does not apply to the final paymentunder Clause 33.

A new Clause 5A is inserted as follows:

**5A Provisional Sum and Prime Cost Items**

5A.0 A **Provisional Sum** shown in Item 11A of the Contract Information is a sum exclusive of GST included in the contract for:

* performance of foreseeable **Necessary Work**, including the supply of materials, not fully described by the **Contract Documents** on the date that this **Contract** was executed.
* connection of an infrastructure service to **the site**, if the detail of the infrastructure service required, or the supplier of the infrastructure service, was not known or had not been finally decided on the date that this **Contract** was executed.

5A.1 A **Prime Cost Sum** shown in Item 11 of the Contract Information is a sum exclusive of GST included in the contract for:

* a foreseeable item of material or equipment, the precise identity of which was not known or had not been specified at the date of the contract; or
* an allowance for payment of a fee or charge to a relevant authority.

5A.2 **We** agree that we have made adequate allowance in the **Cost of Building Work** for the **Provisional Sums** and **Prime Cost Sums** set out in Item 11 and Item 11A of the Contract Information, but not limited to, its preliminaries, overhead and profit.

5A.3 **We** agree that the program contains an adequate allowance of time for any work to be performed under any **Provisional Sum** or **Prime Cost Sum** to the extent that the work was reasonably described in the **Contract Documents** at the time that the contract was executed.

5A.4 Subject to Clause 5A.10, nothing is to be done for which a **Provisional Sum** or a **Prime Cost Sum** has been scheduled in the contract except in accordance with an instruction from the **architect**.

5A.5 The **architect** may instruct **us** to provide a written quotation for anything for which a **Provisional Sum** or a **Prime Cost Sum** has been included in the contract.

5A.6 The quotation must be for:

* the direct cost of the contractor of performing the **Necessary Work**;
* connection of any infrastructure service;
* supplying, or supplying and installing an item of material or equipment; or
* the amount of a fee or charge to a relevant authority,

excluding any margins for preliminaries, overheads, profit or GST.  **We** must notify the **architect** in writing if GST is not applicable to the fee or charge.

5A.7 Except in relation to payment of a fee, or charge to a relevant authority, if the **architect** agrees with the quotation, the **architect** must issue an instruction to proceed accepting the quotation.

5A.8 Except in relation to payment of a fee or charge to a relevant authority, if the **architect**:

* does not agree with the quotation or
* has not instructed the contractor to provide a quotation,

the **architect** may instruct the contractor to proceed, in which case the **architect** must issue a decision.

5A.9 **We** may pay a fee or charge to a relevant authority for which a **Prime Cost Sum** has been included in the **Cost of Building Work** without first receiving an instruction from the **architect**.

5A.10 Except for payment of a fee or charge to a relevant authority, the **architect** may give an instruction to **us** for a person other than **us** to perform work or to supply or supply and install an item for which a **Provisional Sum** or **Prime Cost Sum** has been included in the **Cost of Building Work**.

5A.11 The **architect** may only issue an instruction under this clause if the person is identified in Item 11 or 11A of the Contract Information, or the intention to use a particular person whose identity was not known at the time the contract was executed is shown in Item 11 or 11A of the Contract Information.

5A.12 The **architect** must adjust the **Cost of Building Work** to take account of any difference between a **Provisional Sum** or **Prime Cost Sum** and:

* the accepted quotation,
* the architect's assessment of a claim under Clause 5A.9,
* the amount of a fee or charge to a relevant authority,

as applicable. The **architect** must adjust the **Cost of Building Work** in the next progress certificate.

5A.13 If the assessed cost of performance of the **Necessary Work**, connection of an infrastructure service, or supply, or supply and installation is more than the **Provisional Sum** or **Prime Cost Sum**, the extra cost will be increased by the percentage shown in Item 24 of the Contract Information and added to the **Cost of Building Work**.

5A.14 If the assessed cost of performance of the **Necessary Work**, connection of an infrastructure service, or supply, or supply and installation is less than the **Provisional Sum** or **Prime Cost Sum**, the difference will be deducted from the **Cost of Building Work**.

5A.15 In relation to a fee or charge paid to a relevant authority, the **architect** must adjust the **Cost of Building Work** by deducting, or adding, the net difference between the **Prime Cost Sum** and the actual fee or charge.

A new Clause 5B is inserted as follows

**5B Interest on overdue payments**

5B.1 Each party must pay interest on any money that it owes the other but fails to pay on time. In the case of **you**, this includes any delay caused by the failure of the **architect** to issue a progress certificate on time.

5B.2 The interest rate is shown in Item 25 of the Contract Information.

5B.3 The interest is calculated daily, from the date the money should have been paid. The interest must be paid on the last day of each month. If interest due on the last day of a month is not paid, it is immediately capitalised and added to the money outstanding.

A new Clause 6A is inserted as follows:

**6A Security**

6A.1 If **we** are required by Item 15 of the Contract Information to provide security for performance of its obligations under this contract, **we** must:

* allow **you** to withhold a cash retention sum; or
* provide **you** with the unconditional guarantees,

according to the alternative required by Item 15 of the Contract Information.

6A.2 If the security provided by **us** is cash retention, **you** may withhold up to 10% of each progress payment until the value held equates to the percentage shown in Item 15 of the Contract Information of **the price**.

6A.3 **You** must hold the cash retention, including interest earned on it, less any bank fees or charges on the account, as trustee for **us** in a separate bank account.

6A.4 A legal or accounting practice's trust account will not discharge **your** obligations under Clause 6A.3.

6A.5 If the security provided by **us** is unconditional guarantees, **we** must within 10 **business days** after this contract is executed, give to **you** two unconditional guarantees each equal in value to the percentage shown in Item 15 of the Contract Information of **the price**.

6A.6 An unconditional guarantee is an unconditional undertaking or a performance undertaking from a recognised financial institution approved by **you**. The guarantees must be of an approved type. The type shown in Schedule 1 is approved.

6A.7 If **you** are registered for GST and able to claim an input tax credit, the value of the unconditional guarantees which must be provided to **you** is exclusive of the GST component of **the price**.

6A.8 **You** may draw on the security provided by **us** under this Clause 6A only if:

* a certificate issued by the **architect** in favour of **you** under this contract is not paid by **us** within the period shown in Item 16 of the Contract Information;
* **we** have not disputed the relevant certificate under Clause 11D; and
* **you** have complied with the procedure set out in Clauses 6A.9 to 6A.11.

6A.9 To draw on the security under Clause 6A.8 **you** must first notify **us** and the **architect** in writing of the basis and amount of its entitlement.

6A.10 If the security is cash retention, **you** may then draw on the cash retention to the extent of its entitlement.

6A.11 If the security is by unconditional guarantees, **you** must first give to the security provider a written demand for payment stating the amount of its entitlement.

6A.12 When the **architect** issues the notice of **practical completion**, **we** are entitled to the release of 50% of the amount of the security then held.

6A.13 If the security is cash retention:

* the **architect** must give to **us** a certificate equal to 50% of the amount of the security then held at the same time that the notice of **practical completion** is issued;
* **we**, on receiving the certificate, must prepare a tax invoice in accordance with Clause 5 and give both documents to **you** for payment; and
* the amount stated in the certificate must be paid in accordance with Clause 5.21.

6A.14 If the security is by unconditional guarantees, **you** must return one of the guarantees to **us** within the period shown in Item 16 of the Contract Information.

6A.15 When the **architect** issues a final certificate for **the work** under Clause 5.17, **you** must release to **us** any remaining security for **the work** less any amount owing to **you** under the certificate.

6A.16 If the security is cash retention, the **architect** must take into account any remaining security when preparing the final certificate.

6A.17 If the security is by unconditional guarantee and:

* the certificate is in favour of **us**, **you** must give to **us** the remaining unconditional guarantee within the period shown in Item 16 of the Contract Information;
* the certificate is in favour of **you**, the certificate is evidence of the basis and amount of **your** entitlement, and **you** may draw on the security under Clause 6A before returning the unconditional guarantee to **us** within the period shown in Item 16 of the Contract Information.

A new clause 6B is added as follows:

**6B Your Program**

6B.1 If requested by the **architect**, **we** must provide a program within 10 working days after receiving such a request. The program must include each of the following:

* the dates of commencement and completion of the major stages of **the work**;
* the **finish date**;
* the start and completion dates of all trades; and
* a critical path.

6B.2 The program is not part of this contract.

6B.3 **We** must give the **architect** an updated program when the **finish date** has been adjusted by 5 **working days** or more or such other period as agreed. The updated program must indicate how the previous program has been affected by any adjustments of time.

Clauses 9.1 and 9.2 are deleted and replaced with the following:

9.1 If, in **our** opinion, the boundaries of **the site** or the siting of **the work** is unclear, **we** must notify the **architect** in writing. The **architect** must promptly issue an instruction to **us**.

9.2 Not used.

Clause 10 is deleted and replaced with the following:

**10 Possession of the site**

10.1 **You** must give **us** possession of **the site** within 10 **working days** after **you**:

* have received, or the **architect** as **your** agent has received, a copy of the **contract** executed by both parties;
* are satisfied that all of the insurances required under this contract to be provided by **us**, are in place;
* have received, or the **architect** as **your** agent has received, any **Official Document** required to begin **the work** that is required under Item 19 of the Contract Information to be obtained by **us**.

10.2 In relation to **the site**, **we** must give **you**, the **architect**, separate contractors, consultants and, if applicable, a representative of **your** lending institution, access on reasonable terms to **the site** and all other places at which the **Necessary Work** is carried out in relation to **the work** by or on behalf of **us**, after being given reasonable notice.

10.3 If access to **the site** is given for the purposes in Clause 10.1, **we** may exclude from **the site**, without prior notice, any person on **the site** who does not comply, or in **our** reasonable opinion may have not complied, with **our** work health and safety policies and procedures.

Clause 11.3 to 11.6 (inclusive) are deleted and replaced with "Not used".

New Clauses 11A to 11F are added as follows:

**11A Owner to appoint an architect**

11A.1 **You** must:

* appoint the **architect** to administer this contract;
* indemnify **us** for any liability incurred by **us** to the extent that the liability is a result of any default or negligence of the **architect**; and
* issue instructions to **us** only through the **architect**.

11A.2 If **your** financial position alters to the extent that it may be unable to meet its obligations under this contract, **you** must immediately inform **us** and the **architect** in writing.

**11B Architect to administer contract**

11B.1 The **architect** for the purposes of this contract is shown in the Contract Information.

11B.2 The **architect** is appointed to administer this contract on **your** behalf and **you** warrant that the **architect** has authority to administer this contract.

11B.3 The **architect** is **your** agent for giving instructions to **us**. However, in acting as assessor, valuer or certifier, the **architect** acts independently and not as the agent of **you**.

11B.4 **You** must ensure that the **architect**, in acting as assessor, valuer or certifier, complies with this contract and acts fairly and impartially, having regard to the interests of both **you** and **us**. **You** must not compromise the **architect's** independence in acting as assessor, valuer or certifier.

11B.5 If the **architect** resigns, or becomes incapable of acting as **architect**, or if **you** terminate the engagement of the **architect**, **you** must immediately nominate another **architect** and give written notice of the name and address of the **architect** to **us**. If **we** have no reasonable objection to the nominated **architect**, that person will be appointed as the **architect** for the purposes of this contract. The newly appointed **architect** is bound by the written decisions of any previous **architect**.

11B.6 **We** must comply with all instructions issued under this contract by the **architect**.

11B.7 If **our** capacity to complete **the work**is altered to the extent that it may be unable to meet its obligations, **we** must immediately inform the **architect** and **you** in writing.

**11C Architect's Instruction**

11C.1 The **architect** may issue an instruction at any time during this contract provided that the instruction is given in writing.

**11D Disputing architect's certificate or written decision**

11D.1 If a partywishes to dispute a certificate, notice, written decision or written assessment issued by the **architect**, the partymust give the **architect** written notice under this Clause within 20 **business days** after receiving the certificate, notice, written decision or written assessment.

11D.2 If the party fails to give a notice under Clause 11D.1,that party will not be entitled to dispute the matter at all.

11D.3 The **architect** must assess a notice given under Clause 11D.1 and give a written decision to the partyand the other partywithin 10 **business days***.*

11D.4 If a partywishes to dispute a written decision given under Clause 11D.3, the requirements of Clause 40apply.

**11E Disputing architect's failure to act**

11E.1 If a partywishes to dispute the failure of the **architect** to issue something, the party must give the **architect** written notice under this Clause 11E promptlyafter becoming aware of the failure of the **architect** to issue something.

11E.2 The **architect** must assess a notice given under Clause 11E.1 and give a written decision to the partyand the other party within 10 **business days**.

11E.3 If a partywishes to dispute a written decision given under Clause 11E.2, or the **architect's** failure to give that decision, the requirements of Clause 40 apply.

**11F Failure to give certificate, written decision or notice is not acceptance**

11F.1 If the **architect** fails to issue a certificate, notice, written decision or written assessment required under this contract in respect of a claim, this does not mean that the claim has been accepted or is valid.

In Clause 12.3, the words "by whatever time is reasonable" is deleted.

Clauses 12.3.5, 12.3.10, 12.3.11 and 12.3.16 are deleted and replaced with "Not used".

Clause 12.4 is deleted and replaced with "Not used".

New Clauses 12.5 to 12.15 are added as follows:

12.5 **We** are entitled to make a claim to adjust the **finish date** only if **we**:

* promptly notify the **architect** in writing of its intention to make a claim after receiving an instruction or, if no instruction is issued, promptly notifies the **architect** after becoming aware of an event that will result in a claim; and
* submit the detailed claim to adjust the **finish date** to the **architect** within a time agreed in writing between **us** and the **architect** or, if no time is agreed, within 20 **working days** after receiving an instruction or, if no instruction is issued, within 20 **working days** after becoming aware of the event that has resulted in the claim and, for these purposes, an event is not a consequence of an instruction.

12.6 The **architect** must promptly assess the claim to adjust the **finish date** and in so doing the **architect** must consider the detailed claim submitted by **us** and any further information the **architect** requests **us** to supply.

12.7 If the **architect** needs additional information to assess the claim, the **architect** must issue a written request to **us**.

12.8 **We** must promptly give to the **architect** any additional information the **architect** reasonably requests.

12.9 The **architect** must, within 20 **business days** after receiving the claim, issue to **us** and to **you** its written decision specifying any adjustment to the **finish date**, or both.

12.10 **We** may dispute the **architect**'s decision or a failure to issue a decision issued under this Clause in accordance with Clause 11D but must continue to perform its contractual obligations.

12.11 **Our** sole entitlement to damages for delays is the rate shown in Item 26 of the Contract Information.

12.12 If **we** have not made a claim to adjust the **finish date**, the **architect** may adjust the **finish date** at any time up to the issue of the notice of **practical completion.**

12.13 **We** must take all reasonable steps to minimise the impact of the delay on the progress of **the work**.

12.14 If one overlapping cause of delay further extends the delay resulting from another overlapping cause, **we** are entitled to:

* an adjustment of the **finish date** equal to the time from the commencement of the first occurring delay to the end of the last overlapping delay; and
* damages under Clause 12.11 for that part of any delay due to an event described in Clause 12.3 that is not simultaneous with another delay event and to the extent not caused or contributed to by **us.**

12.15 If one overlapping cause of delay does not further extend the delay resulting from another overlapping cause, **we** are entitled to:

* an adjustment of time equal to the period of time from the first occurring overlapping delay; and
* damages under Clause 12.11 for that part of any delay due to an event described in Clause 12.3 that is not simultaneous with another delay event and to the extent not caused or contributed to by **us.**

A new Clause 12A is added as follows:

**12A Liquidated damages**

12A.1 If **the work** has not reached **practical completion** by the end of the **finish date** as adjusted, the **architect** must promptly notify **us** and **you** in writing of **your** entitlement to liquidated damages.

12A.2 Up to 20 **business days** after the date of issue of the notice of **practical completion,** **you** may notify the **architect** in writing whether it will enforce its entitlement to liquidated damages against **us.**

12A.3 **We** are liable to pay or allow to **you** liquidated damages at the rate shown in Item 27 of the Contract Information until the earlier of:

* the date on which **practical completion** is achieved; or
* the date this **contract** is ended.

12A.4 If **you** notify the **architect** in writing under Clause 12A.2, then the **architect** must:

* notify **us** of **your** decision within one **working day**; and
* deduct liquidated damages from the next and subsequent progress certificates, as applicable.

12A.5 If, after the **architect** has issued a certificate in which an allowance for **your** entitlement to liquidated damages has been made, an adjustment is made to the **finish date**, with the result that **your** entitlement to liquidated damages is altered, or **you** have advised that it no longer wishes to enforce its entitlement to liquidated damages, the **architect** must make an appropriate adjustment in the next certificate.

Clause 13 is deleted and replaced with the following:

13.1 Without limiting the remainder of this Clause, **we** may ask for **the work** to be varied. The request must be in writing, must be signed and must set out the reason for and details of the **Variations** sought.

13.2 The **architect** may give to **us** a written instruction for a **Variation** at any time before the **date of practical completion**. However, except if Clause 13.7 applies, **we** must continue to perform **the work** in accordance with **the contract documents** until **we** receive an instruction to proceed under Clause 13.10.

13.3 The instruction for a **Variation** may include an instruction to provide within 20 **working days**, or longer period if stated in the instruction, the following:

* a detailed estimate of the whole, or any part, of the cost of, or any saving, as a result of the **Variation** and its effect on **the price**; and
* an estimate of the effect of the **Variation** on the **date for practical completion**.

13.4 **We** may request an instruction to proceed from the **architect** if it considers that a **Variation** may be required. The request must be in writing and state:

* the reason for and scope of, the **Variation**;
* its effect on **the work** and any effect on any permit for **the work**;
* its effect on the **date for practical completion**; and
* the full cost of the **Variation** and its effect on **the price**.

13.5 A **Variation** is a change to:

* the scope of **the work** as contemplated by **the contract documents** and capable of being executed under this contract;
* a dimension or level of **the work**;
* the materials, workmanship or quality of any part of **the work**;
* a detail of **the work**; or
* the order of precedence of **the contract documents** referred to in Clause 32.3.

13.6 **We** must review any written instruction issued by the **architect** under Clause 13.2.

13.7 If the instruction will not:

* result in an adjustment to **the price**;
* require an adjustment to the Building Period; or
* require an alteration to any **Official Document**,

then **we**:

* must carry out the instruction promptly;
* is not required to obtain an instruction to proceed; and
* is not entitled to any adjustment to the **contract** as a result of carrying out the instruction.

13.8 If the instruction will:

* result in an adjustment to **the price**;
* require an adjustment to the Building Period; or
* require an alteration to any permit for **the work**,

**we** must within 10 **working days**, unless **we** have received a request for information under Clause 13.3, notify the **architect** in writing, stating:

* the effect of the **Variation** on **the work** and any effect on a permit for **the work**;
* its effect on the Building Period; and
* the full cost of the **Variation** and its effect on **the price**.

13.9 Except where Clause 13.7 applies, **we** must continue to carry out **the work** in accordance with **the contract documents** until a further instruction is received under Clauses 13.10 to 13.12, and **we** are not entitled to any adjustment to the **contract** as a result of carrying out an instruction to which Clause 13.8 applies, unless **we** receive an instruction to proceed following **our** notification under Clause 13.8.

13.10 Within 5 **business days** after receiving the requested information under Clause 13.8, the **architect** must:

* instruct **us** in writing whether or not to proceed;
* instruct or further instruct **us**, as the case may be, under Clause 13.3; or
* instruct **us** to negotiate with the **architect** as **your** agent on the scope, cost or time of the **Variation** and the time by which an offer in negotiation must be accepted.

13.11 If the **architect** has instructed **us** to begin negotiation on the **Variation**, the **architect** may at any time before the date of **practical completion** issue a further instruction to proceed with the **Variation** which confirms the details of the acceptance of any quotation to adjust the contract scope, time or cost. Any instruction issued following agreement reached in negotiation on the **Variation** must be given not more than two **business days** after the agreement is reached.

13.12 Within 5 **business days** after receiving all requested or further requested information under Clause 13.3, or a request under Clause 13.4, the **architect** must instruct **us** whether or not to proceed with the **Variation**.

13.13 An instruction to proceed under Clause 13.12 must confirm acceptance of, and provide a copy of, **our**:

* quotation for the whole of the cost of the **Variation**; and
* estimate of an effect on the **date for practical completion**.

13.14 If the **architect** instructs **us** to proceed with the **Variation**, **we** must:

* promptly proceed with the **Variation**; and
* notify the **architect** in writing when the **Necessary Work** for the **Variation** has been completed.

13.15 If the **architect** issues a written instruction to proceed that confirms acceptance of a quotation, the **architect** must adjust **the price** and the **finish date** (if applicable) in accordance with the quotation in the next certificate.

13.16 If an Authorised Person issues an **Official Document** to **us** which requires a **Variation** to **the work**, **we** must notify the **architect** in writing promptly after receiving the **Official Document**. The notification must request an instruction from the **architect** and provide a copy of the **Official Document** to the **architect**.

13.17 If the **architect** receives an **Official Document** from **us** under Clause 13.16 the **architect** must promptly issue a written instruction to **us** regarding the **Official Document** within 5 **business days** of receiving the **Official Document**.

13.18 **We** are only entitled to make a claim to adjust **the price** for any loss, expense or damage that results from a written instruction issued under Clauses 13.16 and 13.17 or a claim to extend the **finish date** under Clause 12 if the circumstances giving rise to the **Official Document** being issued were beyond **our** control.

Clause 14 is deleted and replaced with "Not used".

Clauses 16 and 17 are deleted and replaced with "Not used".

Clause 18.1 to 18.3 (inclusive) is deleted and replaced with the following:

18.1 If, after this contractis signed, a **statutory or other authority** introduces or increases any tax, charge, levy or other regulation that causes any cost increase in the cost of **the work,** there will be an adjustment of **the** **price**.

18.2 If **we** are required to do more or less work to comply with a change to a requirement of a **statutory or other authority** that is introducedafter this contractis signed, **we** must promptly notify the **architect** in writing giving details of the effect of the change on **the work.** The **architect** must promptly issue an instruction to **us.**

18.3 If an instruction under clause 18.2 causes **us** to incur more or less cost in carrying out **the work**, **we** must ask for a **Variation** and Clause 13 applies.

A new Clause 18A is added as follows:

**18A Supply of copies of Official Documents**

18A.1 **We** and **you** must promptly give to the **architect** or the **architect** must promptly give to **us**, a copy of any **Official Document** either in or coming into its possession in relation to **the work**.

18A.2 An **Official Document** is:

* any report, notice, order, permit, licence, approval or other document required or issued by an **Authorised Person** in relation to **the work**;
* any statutory approval;
* an approval for provision of infrastructure services to **the site**; and
* any other document required under any relevant law or statutory requirement.

18A.3 An **Authorised Person** is a building inspector or certifier or other person authorised under any relevant law or statutory requirement having jurisdiction over **the work**.

Clause 19 is deleted and replaced with the following:

19.1. The goods and services to be provided by **you** are as set out in Item 23 of the Contract Information or specifically identified elsewhere in **the contract documents**. **The** **price** excludes these items.

19.2 If **you** do not supply such an item by the time reasonably nominated by **us** or the item is unsuitable, **we** must promptly notify the **architect** in writing giving details of the effect on **the work***.* The **architect** must promptlyissue an instruction to **us**.

19.3 **You** warrant that all items, materials, fixtures and fittings sourced or supplied and requested by **you** to be incorporated into the **works** will comply with the Building Code. However, if **we**:

* are or become aware that such materials do not or will not comply; or
* have a reasonable doubt about whether such materials do or will comply with the Building Code,

then **we** must promptly give **you** a notice and a copy to the **architect**, identifying the relevant materials and stating that they may not be compliant with the Building Code and may not be fit for the intended purpose. If such materials are not compliant with the Building Code and **we** have not given such a notice, then this warranty does not apply and is of no effect. A notice given under this Clause is not a request for an instruction.

Clause 20 is deleted and replaced with the following:

**20 Latent conditions**

20.1 **You** warrant that **you** have given **us** all the **Site Information** in **your** possession at least 5 **business days** before the closing of tenders.

20.2 **Site Information** includes any reports, surveys, test results, plans, specifications, computations or other information such as foundations data, soils tests or geotechnical tests and any other information regarding **the site** and the physical conditions on and underlying **the site**.

20.3 Before executing this contract, **we** must have examined the **Site Information** and have inspected **the site** and its surroundings and, having done so, are entitled to rely on **the Site Information** to the extent that it is reasonable to do so, having regard to the nature of **the site** and its surroundings.

20.4 **We** must indemnify **you** against a claim for any loss, expense or damage incurred by a subcontractor engaged by **us** or any other person as a result of **us** failing to examine **the Site Information** or inspect **the site**.

20.5 **We** must notify the **architect** in writing and seek instructions within 5 **business days** if **we** discover:

* a **Latent Condition** affecting **the site** which **we** consider may result in **us** incurring loss, expense or damage, or may affect **our** ability to bring **the work** to **practical completion** by the end of the **finish date** as adjusted; or
* a **Valuable Item** on **the site**.

20.6 A **Latent Condition** is a physical condition on, underlying or adjacent to **the site** which a competent builder in **our** position would not have anticipated if they had examined **the Site Information** and inspected **the site** before executing this contract.

20.7 A **Valuable Item** includes minerals, money, treasure, fossils, archaeological remains, historic objects or relics.

20.8 Any **Valuable Item** remains the property of **you** and **we** must take all necessary steps to avoid removal of, loss of, or damage to, any **Valuable Item**.

20.9 The **architect** must promptly give **us** a written instruction regarding a **Latent Condition** or **Valuable Item**.

20.10 **We** are entitled to make a claim for a **Variation** in relation to a written instruction given by the **architect** regarding the discovery of a **Latent Condition** or a **Valuable Item**.

Clause 21.5, is deleted and replaced with the following:

"If any change is required to the existing services, **we** must promptly notify the **architect** in writing and the **architect** must issue a direction."

Clause 22 is deleted and replaced with "Not used".

Clause 23 is deleted and replaced with the following:

23.1 Unless the **Contract Documents** state otherwise, **we** own and will own the following:

* all demolished materials; and
* all unfixed materials supplied by **us,** but only until **you** have paid for the materials.

Clause 24.2 is deleted and replaced with the following:

24.2 **We** may subcontract any part of **the work** but will remain responsible for all of **the work.**

Clause 25 is deleted and replaced with the following:

**25 Practical completion, hand-over**

25.1. **The work** is at **practical completion** when, in the reasonable opinion of the **architect**:

* they are substantially complete and any incomplete work or defects remaining in **the work** are of a minor nature and number, the completion or rectification of which is not practicable at that time and will not unreasonably affect occupation and use;
* all commissioning tests in relation to the plant and equipment shown in Item 20 of the Contract Information have been carried out successfully; and
* any approvals required for occupation have been obtained from the relevant authorities and copies of **Official Documents** evidencing the approvals have been provided to the **architect**.

25.2 Subject to Clause 6A, **you** take possession of **the work** at 4.00pm on the date the **architect** issues the notice of **practical completion.**

25.3 At least 10 **working days** before the date **we** expect that **practical completion** will be reached, **we** must inspect **the work** and prepare a detailed schedule of defects and incomplete work and give a copy of the schedule to the **architect**.

25.4 At the same time, **we** must give the **architect** a written timetable for the correction of defects and completion of incomplete work.

25.5 When **we** consider that **the work** is at **practical completion**, **we** must notify the **architect** in writing and give a copy of the detailed schedule of defects and incomplete work indicating that each item has been corrected or completed to the satisfaction of **us**.

25.6 The **architect** must commence its inspection of **the work** promptly and complete the inspection within an agreed time or, if none is agreed, within 10 **business days**. The **architect** must issue a notice or instruction under Clauses 25.8 or Clause 25.10.

25.7 Within the agreed time for the **architect**'s inspection, or if none is agreed, within 10 **business days**, **we** must give the **architect** any **Official Documents** required for occupation and evidence that all the commissioning tests shown in Item 20 of the Contract Information have been successful.

25.8 If the **architect** decides that **the work** has reached **practical completion**, the **architect** must give written notice of **practical completion** to **us** and to **you** within 5 **business days** after completing the inspection. The notice must state the date when **practical completion** was reached.

25.9 The **architect** must also notify **you** in writing that security must be released in accordance with Clauses 6A.15 to 6A.17.

25.10 If the **architect** considers that **the work** is not at **practical completion** the **architect** must give a written notice to **us** copied to **you**, listing what is to be done for **practical completion** to be reached. The **architect** must give the notice to **us** within 5 **business days** after completing the inspection.

25.11 If the **architect** gives notice to **us** under Clause 25.10 **we** must promptly do whatever is necessary for **practical completion** to be reached. **We** must notify the **architect** in writing when it considers **the work** has reached **practical completion**. The procedures under Clauses 25.2 to 25.11 apply until the **architect** decides that **the work** has reached **practical completion**.

25.12 If the **architect** fails to issue a notice under Clauses 25.8 or Clause 25.10 within 5 **business days** of completion of the inspection, **we** may request in writing that the **architect** issue a notice.

25.13 If the **architect** fails to issue a notice within 5 **business days** of the request:

* **we** may make a claim to adjust the **contract** for any loss, expense or damage that results from the failure of the **architect** to issue a notice and
* the date of **practical completion** will be the date identified in **our** notice made under Clauses 25.5 to 25.7; and
* any security must be released in accordance with Clauses 6A.15 to 6A.17.

25.14 If **you** take possession of **the work** before the **architect** issues the notice of **practical completion**, **the work** is to be treated as having reached **practical completion**. The **architect** must issue to **us** and to **you** a notice of **practical completion** for **the work** within 5 **business days** after being notified in writing that **you** have taken possession, unless Clauses 25.8 applies.

A new Clause 25A is added as follows:

**25A Builder to correct defects and finalise the work**

25A.1 **We** must correct any defects or finalise any incomplete work, whether before or after the **date of practical completion**, within the agreed time as stated in an instruction or if no time is stated, within 10 **working days** after receiving a written instruction from the **architect** to do so.

25A.2 If **we** fail to correct a defect or finalise any incomplete work within the time nominated under Clause 25A.1 or fail to show reasonable cause for the failure together with a timetable for correcting the problem that is acceptable to the **architect**, **you** may use another person to correct the problem at **our** cost.

25A.3 If **you** are required to use another person to rectify a problem, **you** are entitled to make a claim for a **Variation**.

25A.4 If **you** make a claim to adjust the **contract** the **architect** must promptly assess the claim and may issue a certificate under Clause 5.8.

A new Clause 25B is inserted as follows:

**25B Testing**

25B.1 The **architect** may at any time give to **us** a written instruction to open up or carry out tests on elements of **the work**other than as required by **the contract documents**. **We** must promptly comply with the instruction.

25B.2 **We** are entitled to make a claim for a **Variation** under Clause 13 in relation to any loss, expense or damage that results from an instruction under Clause 25B.1, only if the opening up or testing does not reveal defects or incomplete work.

Clause 26 is deleted and replaced with the following:

**26 Defects liability period**

25C.1 The defects liability period is shown in Item 21 of the Contract Information and commences on the date on which the **works** were certified as having achieved **practical completion**. **You** must give **us** access to **the site** for the duration of the defects liability period for the purpose of **us** fulfilling **our** obligations under Clause 25C.3.

25C.2 The **architect** may notify **us** that, in respect of any part of **the work** that has undergone significant correction within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the corrected work.

25C.3 If there is any remaining defect or incomplete work, or **we** become aware by instruction from the **architect** or from **our** own observations of any defect or incomplete work during the defects liability period, **we** must promptly return to **the site** and correct the defect or finalise the incomplete work. This obligation continues until the defect is corrected or the incomplete work is finalised, and does not come to an end when the defects liability period is over.

25C.4 The **architect** cannot give the first instruction to correct an outstanding defect or to finalise any incomplete work after the end of the defects liability period, unless it is for the rectification of a latent defect and the final certificate has not been issued.

Clauses 27 and 29 are deleted and replaced with "Not used".

Clause 30 is deleted and replaced with the following:

**30 Risk**

30.1 Subject to clauses 30.5 to 30.7, from the time **we** are given possession of **the site** until 4.00pm on the **date of practical completion**, **we** bear the risks described in the following:

* The risk of injury to or illness, disease or death of any person occurring as a result of **the work**, on or in the immediate vicinity of **the site**.
* The risk of loss of, or damage to, the property of any person occurring as a result of **the work**, on or in the immediate vicinity of **the site**.
* The risk of loss of, or damage to any of the following items on or in the immediate vicinity of **the site**:
* **the work**;
* any structure on **the site** before the time the contractor is given possession of **the site**;
* on-site materials or equipment intended to be incorporated in **the work**, including any items shown in Item 23 of the Contract Information;
* plant, tools and equipment; and
* damage to **the site** to the extent it is caused by a failure to take reasonable care in carrying out **the work**.

30.2 While **we** bear the risks described in Clause 30.1, **we** must indemnify **you** in respect of any liability arising from negligence or breach of contract or breach of statutory duty by **us** or any of **our** employees, agents, licensees or subcontractors.

30.3 The amount of **our** indemnity to **you** is reduced to the extent to which **you** or any of **your** employees, or agents is responsible for the personal injury, illness, disease, death or loss or damage.

30.4 Except if expressly provided otherwise in this contract, if **we** are to indemnify, reimburse, pay a contribution or pay damages to **you** under this Clause 30.4 or under any other Clause, the amount **we** must pay **you** is:

* reduced by any input tax credit directly obtained or obtainable by **you**; and
* increased by GST **you** have paid or will pay on that indemnity, reimbursement, contribution or damages.

30.5 Subject to Clauses 30.6 to 30.8, from 4.00pm on the day the **Architect** issues the notice of **practical completion**, **you** bear the risks described in the following:

* The risk of injury to, or illness, disease or death of any person on or in the immediate vicinity of **the** **site**.
* The risk of loss of, or damage to, the property of any person on or in the immediate vicinity of **the site**.
* The risk of loss of, or damage to, any of the following items on or in the immediate vicinity of **the site**:
* **the works**; and
* materials or equipment intended to be incorporated into **the works**, including any items shown inItem 23 of Schedule 1.

30.6 While **you** bear the risks described in Clause 30.5, **you** must indemnify **us** in respect of any liability arising from negligence or breach of contract or breach of statutory duty **you** or any of **your** employees, agents, or licensees.

30.7 **Your** obligation to indemnity **us** is reduced to the extent to which **we** or any of **our** employees, agents or subcontractors are responsible for the personal injury, illness, disease, death or loss or damage.

30.8 Except if expressly provided otherwise in this Contract, if **you** are to indemnify, reimburse, pay a contribution or pay damages to **us** under this Clause or under any other Clause, the amount **you** must pay **us** is:

* reduced by any input tax credit directly obtained or obtainable by **us**; and
* increased by GST **we** have paid or will pay on that indemnity, reimbursement, contribution or damages.

30.9 If an event occurs which causes loss or damage during that period when **we** bear the risk, **we** must promptly reinstate, at its own expense, the lost or damaged items referred to in Clause 30.1.

30.10 **You** must indemnify **us** for the cost of reinstatement under this Clause to the extent to which **you**, **your** employees or agents was responsible for the event which caused the loss or damage.

Clause 31 is deleted and replaced with the following:

**31 Public liability insurance**

31**.**1 From the time **we** are given possession of **the site** until 4.00pm on the day the **architect** issues the final certificate to **us** and to **you**, the party nominated in Item 17 of the Contract Information must take out and maintain insurance naming **us**, **our** subcontractors and **you** as insureds, against:

* injury to or illness, disease or death of, any person occurring directly as a result of the **Necessary Work**, on or in the immediate vicinity of **the site** (excluding liability in respect of worker's compensation and employer's liability); and
* loss of, or damage to the property of, any person occurring directly as a result or the **Necessary Work**, on or in the immediate vicinity of **the site** (except **the work**, or materials or equipment on **the site** that are intended to be incorporated in **the work** or plant, tools and equipment used on **the site**).

31.2 The policy must contain all terms required by law and the following terms:

* the insurance covers the interests of **you**, **us** and any other person involved in the **Necessary Work**; and
* the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

New Clauses 31A to 31H are added as follows:

**31A Contract works insurance**

31A.1 From the time **we** are given possession of **the site** until 4.00pm on the day the **architect** issues the final certificate to **us** and to **you**, the party nominated in Item 18 of the Contract Information must take out and maintain insurance naming **us**, **our** subcontractors and **you** as insureds against loss of or damage to the items referred to in Clause 30.1.

31A.2 The policy must contain any term required by law and each of the following:

* the insurance covers the interests of **you** and **us**;
* notice of a claim given by any one insured is effective in relation to each of the insureds; and
* the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

**31B Entitlement to Input Tax Credit**

31B.1 The parties must each notify their insurer of their respective entitlement to an input tax credit on the insurance premium within 20 **business days** of the insurance being taken out. Each party must indemnify the other for any loss arising out of the party's failure to notify the insurer. On request by a party, the other party must provide evidence that it has complied with this Clause.

**31C Insurance cover**

31C.1 The insurance against loss of or damage to the items referred to in Clause 30.1 must cover:

* the full reinstatement or replacement cost of **the work**, materials and equipment on **the site** that are intended to be incorporated in **the work**, and plant, tools and equipment used on **the site**;
* additional consultants' fees including the **architect's** fees, relating to the reinstatement or replacement for the amount shown in Item 18 of the Contract Information;
* any necessary demolition and removal of debris, for the amount shown in Item 18 of the Contract Information; and
* all GST associated with reinstatement and replacement of **the work**.

31C.2 The insurance against liability for injury, illness, disease or death must be at least for the amount shown in Item 17 of the Contract Information.

**31D Builder and owner not to affect insurance**

31D.1 **We** and **you** must not do or fail to do anything, or allow anything to be done or not be done, which might affect any insured's right to recover from the insurer in respect of damage or liability covered by an insurance.

**31E Worker's Compensation and employer's liability insurances**

31E.1 **We** must maintain worker's compensation or employer's liability insurance in accordance with the statutory scheme that applies under this contract until the final certificate for **the work** is issued. If that scheme does not provide for an indemnity against a common law damages claim by a worker, **we** must also maintain insurance against that risk.

31E.2 **We** must ensure that each of **our** subcontractors maintains similar insurances.

**31F Insurance claims**

31F.1 Subject to Clause 31F.3, **we** have the primary responsibility to make any claim under an insurance policy required by this contract.

31F.2 **You** must make a claim if **you**, **your** agents, employees or licensees directly causes the event giving rise to the loss.

31F.3 The following are the obligations of either **you** or **us** when making an insurance claim for any loss or damage arising from an insured event:

* the insurance claim must be made promptly;
* the party making the insurance claim must provide all information which is required under the relevant insurance policy;
* the party making the insurance claim must promptly notify the **architect** in writing on becoming aware of the event giving rise to the insurance claim;
* the notice must contain details of the insurance claim; and
* the party making the insurance claim must promptly give the **architect** any additional information the **architect** reasonably requests.

**31G Payment of excess**

31G.1 The party making a claim under an insurance policy arranged under Clause 31 or 31A must pay the excess.

31G.2 The party paying the excess may recover the excess cost from the other party in proportion to the extent to which the personal injury, illness, disease or death or loss or damage is the result of negligence, or breach of contract or breach of statutory duty by the other party. The excess paid under Clause 31G.1 that is to be reimbursed, is the amount shown in Item 17 of the Contract Information.

**31H Warranty insurance**

31H.1 If required by the *Building Work Contractors Act 1995* (SA) **we** must:

* take out and maintain a policy of insurance which complies with the *Building Work Contractors Act 1995* (SA); and
* give **you** and **architect** a copy of a completed certificate in respect of the insurance and any other document in the form and as required by the *Building Work Contractors Act 1995* (SA).

31H.2 If required warranty insurance policy has not been issued before this contract is executed, then until the **architect** receives satisfactory evidence that the warranty insurance policy has been issued, **we**:

* may not enforce any provision of this contract; and
* may not carry out any work under this contract.

31H.3 Satisfactory evidence for the purpose of Clause 31H.2 must be a satisfactorily completed Certificate of Currency in the form set out in Schedule 2.

The title of Clause 32 is deleted and replaced with "Discrepancies."

Clauses 32.1 and 32.2 are deleted and replaced with "Not used".

Clause 32.3 is deleted and replaced with the following new clauses:

32.3 If there is any inconsistency between these general conditions and **the contract documents**, they take priority in the following order:

* any extra contract terms under Clause 14;
* these general conditions;
* the plans; then
* other **Contract Documents**.

32.4 If either party discovers a discrepancy, an ambiguity, or an omission in, or between, any of **the contract documents**, that party must promptly give written notice to the a**rchitect**. The **architect** must promptly resolve the discrepancy, the ambiguity, or the omission by giving a written instruction to **us** and a copy to **you** and **we** must comply with this discrepancy and shall have no entitlement to claim in relation to the instruction unless Clause 32.5 applies.

32.5 An instruction from the **architect** to resolve a discrepancy, an ambiguity, or an omission that is not in accordance with the order of precedence referred to in Clause 32.4, is an instruction for a **Variation** under Clause 13.

Clause 33.3 is deleted and replaced with the following:

If **you** correct the breach, **we** must recommence **the work** as soon as practicable.

Clauses 34.1 is deleted and replaced with the following:

**We** may, in addition to any other rights under this contract, terminate the contract if **you** commit a substantial breach of this contract if **you** fail to remedy the breach within 10 **business days** of receiving written notice from **us.** A substantial breach of this Contract by **you** is:

* failing to pay progress payments as required by Clause 5; or
* any other substantial breach of this contract.

In Clause 34.2, after "breach of this contract by **us**," insert "if **we** fail to remedy the breach within 10 **Business Days** of receiving written notice from **you.**"

New Clauses 35.7 and 35.8 are added as follows:

35.7 If a dispute or difference arises out of or in relation to this contract, the parties must continue to perform their obligations under this contract.

35.8 Nothing in this Clause prevents either party from taking action at any time to enforce payment due under a certificate issued in accordance with this Contract or to see urgent court relief to prevent the detrimental action of the other party.

Clause 38 is deleted and replaced with "Not used".

New Clauses 42.7 to 42.9 are added as follows:

42.7 The **architect** is not **your** agent for giving or receiving notices under Clauses 11D, 11E, 34, 35, 36, 37, 39, 40 or 41.

42.8 **We** must provide the **architect** with a copy of all notices and documents required to be provided to **you** under this contract.

42.9 The **architect** may provide any notice required under this contract to be provided by **you** in its place and in doing so shall discharge **your** obligation to do so under this Contact.

**Attachment 1**

Schedule 1 – builder's unconditional guarantee to you

**Clause 6A(6)**

for [insert amount $AUD]

in favour of [insert **your** name]

[Insert **your** name, and ABN if **you** are is a company] of [insert address] (**you / your**) has entered into a written contract dated [insert contract date] with [insert **our** name and ABN] of [insert address] (**us / we)** for the construction of **the work** described in that contract. The contract states that **we** may elect to give security for the performance of the contract in the form of an unconditional guarantee.

[Insert name of security provider] unconditionally undertakes that if **you** give it a written notice stating the basis and extent of its entitlement to draw on the undertaking and the amount to which it is entitled, the security provider will pay **you** the amount which **you** declare is due, up to a maximum of the combined amount of [insert amount $AUD] (the **Amount**).

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to **us**, despite any notice by **us** or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this undertaking is not affected by any **Variation** of the contract or by any waiver by **you** of any default by **us**.

This undertaking remains in force until the first of the following events occurs:

* **you** notify the security provider in writing that this undertaking is no longer required;
* the security provider pays the Amount to **you**; or
* **you** inform the security provider that **we** have performed all its obligations and paid all amounts required to be paid under the contract; or
* [insert date of expiry/termination of this undertaking].

This undertaking creates no rights in anyone except **you** and **your** successors and cannot be assigned.

This undertaking is governed by the law of [insert jurisdiction].

**EXECUTED** on [insert date] as a **Deed**.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

*Signature of attorney*

*Signature of witness*

Schedule 2 – Certificate in respect of insurance

***Building Work Contractors Act* 1995 (SA)**

**Form 2 – *Building indemnity insurance certificate***

***Building Work Contractors Act 1995, section 34***

|  |  |
| --- | --- |
| Certificate No: |  |

A policy of insurance that complies with Part 5 Division 3 of the *Building Work Contractors Act* 1995 has been issued as follows:

|  |  |
| --- | --- |
| Name of insurer: |  |
| Name of building owner: |  |
| Brief description of domestic building work: |  |
|  |  |
|  |  |
| Address or description of premises at which to be carried out: |  |
|  |  |
|  |  |
| Name of building work contractor: |  |
|  |  |
| Licence number of building work contractor: |  |
| Signature of employee or agent of the insurer: |  |