

# Contract **TOOLBOX**<sup>TM</sup> for the Construction Industry

TOOL 2  
Review of common  
contract conditions

HB 226.2—2000

By Nathan McDonald  
B.Eng, M.Eng Prac

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## ABOUT THE AUTHOR

Nathan McDonald has a Bachelor of Mechanical Engineering, a Masters Degree Engineering Practice and industry qualifications in scaffolding, rigging, welding supervision and quality management system auditing.

He has been exposed to numerous types of contracts, purchase orders, instructions and standards from both the client and the contractor perspectives for the last decade.

During this experience, Nathan has found that construction industry is predominantly run by people who have been trained in a particular technical discipline but have had little training in the skills and knowledge required for managing tendering and contracting situations. This gap sparked the development of the Contract TOOLBOX™ for the Construction Industry.

Nathan presents corporate and public workshops that complement this TOOLBOX™. Information to help you plan, book and deliver a tailored in-house workshop can be found at the Contract TOOLBOX™ internet site.



Internet: [www.contract-toolbox.com](http://www.contract-toolbox.com)  
PO Box 1447 MAROUBRA NSW 2035

Ph/Fax: (02) 9344 3816

E-mail: [frontdesk@contract-toolbox.com](mailto:frontdesk@contract-toolbox.com)

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An important part of this TOOLBOX™ is the references to publications by Standards Australia; the Australian Procurement and Construction Council (APCC); Construction Industry Development Agency (CIDA) and Construction Information Systems (CIS).

With appreciation, Nathan McDonald

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## Preface

Contract TOOLBOX™ for the Construction Industry is a set of stand-alone inter-linked books and reference wallcharts that explain how clients & contractors ensure contracting success.

Each book and chart in the TOOLBOX™ has been designed to solve a different problem - a lot like the tools in a tradesman's toolbox.

It has been prepared by Nathan McDonald and published Standards Australia.

The concepts and explanations are equally applicable to design, construct, supply, installation and maintenance contracts.

The TOOLBOX™ collates, summarises and presents the scope of Australian contracting Standards and practices.

Contract TOOLBOX™ will be beneficial for clients, contractors, subcontractors, consultants, insurers and dispute resolvers.

In particular, the TOOLS will help:

- cost estimators, contract managers and administrators
- architects, engineers, quantity surveyors, surveyors, tradesmen and lawyers
- contract supervisors and superintendents
- quality assurance, environmental; and occupational health, safety and rehabilitation representatives
- trade apprentices and university graduates

TOOL 1 has been designed as the master document. It is a generic introduction to how clients & contractors ensure contracting success in the construction industry. It introduces the concepts and provides references to current standards of practice. In particular, it explains the contracting process which includes tendering, contract administration, dispute resolution and risk management. It explains the common problems in the industry and provides references to the other TOOLS in the TOOLBOX™ that solve them.

This handbook, TOOL 2, explains the common conditions used in construction industry contracts.

In particular, it discusses the typical conditions within the commercial conditions and technical specification sections of the contract; and how they related with those in referenced documents such as drawings, bills, schedules, construction programs, industry standards, codes of practices and government legislation.



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## Introduction

This handbook, TOOL 2, forms a part of the Contract TOOLBOX™ for the Construction Industry.

The first tool in the TOOLBOX™ explained that contracts in the construction industry were normally divided into commercial and technical conditions; and that both referenced other documents, like:

- drawings
- bills and schedules
- construction programs
- industry Standards
- codes of practice
- government legislation

This handbook explains the common conditions within these documents.

It has been designed to work in conjunction with:

- TOOL1: How Clients & Contractors ensure success (HB 226.1—2000)  
A generic introduction to how clients & contractors ensure success in construction industry contracts. The concepts, explanations and references are equally applicable to design, construct, supply, installation and maintenance contracts. In particular, it explains the contracting process that includes tendering, contract administration, dispute resolution and risk management.
- TOOL 3: Review of commonly referenced standards (HB 226.3—2000)  
Summaries of the Standards commonly referenced in construction industry contracts, such as tendering, commercial conditions, management systems, bills & schedules; and construction programming. It also summarises the parent technical standards of the industry such as concrete, timber & metal structures; pressure piping, vessels & boilers; pipelines, non-destructive testing of metallic products & electrical installations. It may be equally used as a starting point for your contract review process; as a checklist for meetings between the client, contractor and third parties; or as a base for the development of inspection and test plans.
- TOOL 4: Book of reference wallcharts (HB 226.4—2000)  
A collation and graphically presentation of the information introduced in TOOLS 1, 2 and 3. Such as:
  1. How clients ensure contract success
  2. How contractors ensure contract success
  3. Common contracting risks and how to reduce them
  4. Common contract conditions
  5. Construction products & their standards
  6. Tendering & contracting standards commonly referenced in the construction industry
  7. Trade specific standards commonly referenced in the construction industry
  8. Contractor Tendering Pre-qualification Criteria for Small Projects (CIDA 17—1995)
  9. Contractor Tendering Pre-qualification Criteria (CIDA 18—1995)
  10. Subcontractors Tendering Pre-qualification Criteria (CIDA 19—1995)



11. Management systems (quality, occupational health & safety; environment and legal compliance)
12. Quality management systems – Requirements (AS/NZS ISO 9001 (Int):2000)

In particular, WALLCHART 4 matches the structure of this handbook.

- TOOL 5.x: Comparison checklists for industry Standards (HB 226.5.x)  
A series of handbooks that compare the *common* commercial conditions (introduced in this handbook) with those in popular industry Standards. It also includes common questions asked about the requirements within these Standards and where the answers are found.
- TOOL 6.x: Collections of essential contracting standards (HB 226.6.x)  
A number of collections of Standards commonly referenced in construction industry contracts; such as tendering, contractor pre-qualification criteria, commercial conditions, management systems (quality, health & safety, environment & legal compliance); bills & schedules; and construction programming.

The Contract TOOLBOX™ suite uses the following icons to flag your attention.



*Provides side information that reinforces the topic just mentioned. For example it may describe a **typical working situation** or present an **extract** from an industry Standard or Code of Practice.*



*Identifies that there is **further information** about the topic just covered elsewhere in the Contract TOOLBOX™.*



*Identifies where you can find other information and resources dealing with the topic just mentioned.*



*Identifies points of interest that requires special **attention** or **caution**.*



# 1 Commercial Conditions

The word commercial comes from the word *commerce*, which generally means to buy, sell, deal, exchange or trade.

The commercial conditions often include requirements for:

- the law governing the contract
- impartial administration of the contract
- management of contract documents
- compliance with government legislation
- quality of the contractor's materials and work
  - examination and testing
  - management of defective materials and work
  - contractor quality management system
- management of the construction site
  - contractor possession of the site
  - client access to the site
  - management of site latent conditions
  - management of valuable articles found on site
- insurance cover
  - insurance of the works
  - public liability
  - insurance of the contractor's employees
  - professional indemnity
- programming of the work
  - preparation of a construction program
  - commencement of the work
  - contractor extension of time
  - completion of the work
- payment for the work
  - payment style
  - performance security
  - client payment retention
  - contractor progress and payment claims
  - client progress certificate and payment
  - contractor cost for late completion
  - contractor bonus for early completion
- management of subcontracts
- management of variations to the contract
- dispute resolution procedure
- termination of the contract



Commercial conditions often include references to:

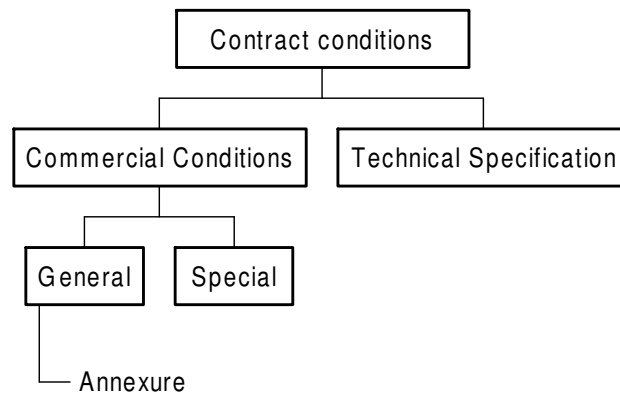
- technical specifications
- drawings
- bills and schedules
- construction programs
- industry Standards
- codes of practice
- government legislation



Chapters 2 and 3 of this handbook explain the conditions within these referenced documents.

The commercial conditions section of the contract is often divided into *general* and *special* commercial conditions, such as shown in Figure 1.

Figure 1



*General* conditions are just that – general. They are not partial or particular to a contract, company or engineering discipline. They are designed this way, so that they may be used for the many different contracts that may arise.

The *special commercial conditions* section of the contract describe the peculiar or unique requirements of each new contract that could not possibly be included in the *general commercial conditions* section.



By dividing commercial conditions up into *general* and *special* conditions, the *general* conditions become familiar to all parties. It also allows parties to develop standard operating procedures for:

- tendering and costing
- contract review
- insurance cover
- construction programming
- management of variations
- progress and payment claims
- payment validation
- dispute resolution

Another advantage is that parties can then focus their attention on the *special* conditions with confidence when they are aware of the *general* conditions.

*General* conditions are often designed with missing requirements, options and alternatives. The parties are required to complete the missing requirements and select the appropriate options and alternatives before they commit to the contract.

They often have an attached pro-forma which prompts the parties as to which particular conditions require completing. This pro-forma is usually known as an annexure.

The details in the pro-forma are considered a part of the commercial conditions as if they were included within.

Typical conditions that need to be completed within the *general* conditions section of the contract include:

- which law will be used to govern the contract
- who the contracting parties are
- who the Impartial Administrator is
- references to other documents involved in the contract, like:
  - technical specification
  - drawings
  - bills and schedules
  - construction programs
  - Industry Standards
  - codes of practice
- payment style
  - lump sum
  - rates for distinctive sections or items
- the requirement and purpose of a bill of quantities
- the dates when possession of the site will be transferred to the contractor
- the contract commencement and completion dates
- when and how performance security is to be paid by each party
- who is required to purchase insurance cover for the works, employees, the public and professional indemnity
- when progress and payment claims are to be made by the contractor
- who the impartial dispute resolver (arbitrator) is to be
- what the contractor's defects liability period is
- rates for:
  - calculating the value of variations
  - client payment retention
  - client cost for late payment (interest)
  - contractor cost for late completion (liquidated damages)
  - contractor bonus payment for early completion