

Australian Standard[®]

**General conditions of subcontract
for design and construct**

This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 27 November 1995 and published on 31 December 1995.

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Australasian Railways Association
Australian Chamber of Commerce and Industry
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
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**General conditions of subcontract
for design and construct**

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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee on General Conditions of Contract and issued as an Australian Standard.

This Standard is to be used in conjunction with the following project procurement methods:

- (a) Design and Construct.
- (b) Design Development and Construct.
- (c) Design, Novate and Construct.

If the project procurement method chosen for the Main Contract results in the Subcontract incorporating design functions, then if the project procurement method is—

- (i) *Design and Construct*—the Main Contractor would provide the Main Contractor's Project Requirements, would not normally provide a detailed Preliminary Design and would not require Novation of any subcontractors (including consultants);
- (ii) *Design Development and Construct*—the Main Contractor would provide the Main Contractor's Project Requirements, would always provide a Preliminary Design and accordingly would complete Annexure Part A Items 14 and 15;
- (iii) *Design, Novate and Construct*—the Main Contractor would provide the Main Contractor's Project Requirements, would always provide a Preliminary Design, would complete Annexure Part A Items 14 and 15 and would complete Annexure Part A Item 30 stating which secondary subcontractors (including consultants) or Selected Secondary Subcontractors are to be novated to the Subcontractor.

This Standard is part of the suite of contracts based on AS 2124—1992 *General conditions of contract*.

WARNINGS:

- 1 This Standard is not recommended for use as the agreement between the Main Contractor and a consultant, or in 'design only' consultancies where the work under the Subcontract does not involve any Subcontractor's Design Obligations.**
- 2 Users of this Australian Standard are warned that Clause 17 (Damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.**
This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the work under the Subcontract) and 19 (Public Liability Insurance).
Parties wishing to limit their liability should seek legal and insurance advice before entering a subcontract under this Standard.
- 3 In relation to insurances, the parties should have regard to Clause 18 regarding the availability during the tender period of a copy of the insurance policy in relation to the work under the Subcontract, and Clause 22.1 regarding proof of evidence of insurances generally before the work commences under the Subcontract.**
- 4 For the purposes of Clause 30.2, the inclusion of Quality Assurance requirements in a contract will require detailed clauses in the contract which have regard to the Quality Standard selected for the work.**

- 5 **Main Contractors should ensure that their specific requirements are fully and completely incorporated in the ‘Main Contractor’s Project Requirements’ obtaining specialist advice if necessary. Where a Subcontractor provides a proposed design as part of its tender the parties should give consideration to whether that design should form part of the Main Contractor’s Project Requirements.**
- 6 **Items in Annexure Part A which are marked with a hash symbol (#) indicate that these items are to be deleted where the Subcontract provides for Separable Portions. If so, the items marked with a hash symbol (#) are to be deleted in Annexure Part A and that part of Annexure Part A entitled ‘Separable Portion’ is to be completed for each Separable Portion.**
- 7 **Clauses which are prefixed by an asterisk symbol (*) may be omitted without making consequential amendments to these General Conditions of Subcontract.**

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WARNING

Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard

General conditions of subcontract for design and construct

1 CONSTRUCTION OF SUBCONTRACT

The law governing the Subcontract, its interpretation and any agreement to arbitrate is the law of the State or Territory stated in Annexure Part A item applicable to Clause 1, or if the State or Territory is not stated, the law of the State or Territory where the Site is located.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place stated in Annexure Part A.

Communications between the Main Contractor, the Subcontract Superintendent and the Subcontractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the National Measurement Act 1960, as amended from time to time.

Where provisions in these General Conditions of Subcontract are expressed to be alternatives and the Subcontract fails to state which alternative applies, the first alternative shall apply.

If pursuant to Annexure Part B to these General Conditions of Subcontract, Clauses or parts of Clauses in these General Conditions of Subcontract are deleted from the Subcontract, this Subcontract shall be read and construed as though the Clause or part of the Clause has been deleted whether or not the particular Clause or part of a Clause has been struck from these General Conditions of Subcontract.

2 INTERPRETATION

In the Subcontract, except where the context otherwise requires—

‘Bill of Quantities’ means a document named therein as a Bill of Quantities issued to tenderers by or on behalf of the Main Contractor, stating estimated quantities of work to be carried out;

‘Certificate of Practical Completion’ means the certificate referred to in Clause 42.3;

‘Constructional Plant’ means appliances and things used in the execution of the work under the Subcontract but not forming part of the Subcontract Works;

‘Date for Practical Completion’ means—

- (a) where Annexure Part A provides a date for Practical Completion, the date; or
- (b) where Annexure Part A provides a period of time for Practical Completion, the last day of the period,

but if any extension of time for Practical Completion is granted by the Subcontract Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;

‘Date of Acceptance of Tender’ means the date which appears on the notice in writing of acceptance of the tender;

‘Date of Practical Completion’ means—

- (a) the date certified by the Subcontract Superintendent in a Certificate of Practical Completion to be the date upon which Practical Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date;

‘day’ means calendar day;

‘Daywork’ means work referred to in Clause 41;

‘Defects Liability Period’ means the period or periods referred to in Clause 37;

‘Design Documents’ means the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created (and including, where the context so requires, those to be created by the Subcontractor) for the construction of the Subcontract Works;

‘direction’ includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

‘dispute’ has the meaning referred to in Clause 47.4;

‘Excepted Risk’ means any of the risks which are referred to in Clause 16.3;

‘Final Certificate’ means a certificate issued by the Subcontract Superintendent to the Contractor and to the Subcontractor pursuant to Clause 42.6;

‘Final Payment Claim’ means the final payment claim referred to in Clause 42;

‘Latent Condition’ means any of the conditions referred to in Clause 12.1;

‘Legislative Requirements’ includes—

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Subcontract or any part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Subcontract; and
- (c) fees and charges payable in connection with the foregoing;

‘Main Contract’ means the agreement between the Principal and the Main Contractor;

‘Main Contract Claim’ has the meaning referred to in Clause 47.6;

‘Main Contract Dispute’ has the meaning referred to in Clause 47.4;

‘Main Contract Works’ means the whole of the work to be executed in accordance with the Main Contract, including variations provided for by the Main Contract, which by the Main Contract is to be handed over to the Principal;

‘Main Contractor’ means the Main Contractor stated in Annexure Part A;

‘Main Contractor’s Project Requirements’ means the written summary or outline of the Main Contractor’s requirements for the Subcontract Works described in the documents stated in Annexure Part A and—

- (a) shall include the stated purpose for which the Subcontract Works are intended;
- (b) may include the Main Contractor’s design, timing and cost objectives for the Subcontract Works; and
- (c) where stated in Annexure Part A, shall include a Preliminary Design;

‘month’ means calendar month;

‘person’ includes a firm or body corporate or unincorporate or an individual;

‘Practical Completion’ is that stage in the execution of the work under the Subcontract when—

- (a) the Subcontract Works are complete except for minor omissions and minor defects—
- (i) which do not prevent the Subcontract Works from being reasonably capable of being used for their stated purpose;
 - (ii) which the Subcontract Superintendent determines that the Subcontractor has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the Subcontract Works;
- (b) those tests which are required by the Subcontract to be carried out and passed before the Subcontract Works reach Practical Completion, have been carried out and passed; and
- (c) documents and other information required under the Subcontract which, in the opinion of the Subcontract Superintendent, are essential for the use, operation and maintenance of the Subcontract Works, have been supplied;

‘Preliminary Design’ means any preliminary design of the Subcontract Works included in the documents stated in Annexure Part A as describing the Main Contractor’s Project Requirements;

‘Principal’ means the Principal to the Main Contract as stated in Annexure Part A;

‘provisional sum’ includes monetary sum, contingency sum and prime cost item;

‘public liability policy’ means a policy of insurance taken out pursuant to Clause 19;

‘Schedule of Rates’ means any schedule included in the Subcontract which, in respect of any section or item of work to be carried out, shows the rate or respective rates of payment for the execution of that work and which may also include lump sums, provisional sums, other sums, quantities and prices;

‘secondary subcontract’ means a subcontract between the Subcontractor and a secondary subcontractor;

‘secondary subcontractor’ means a subcontractor to the Subcontractor and in Clauses 9, 10 and 11(b) includes Subcontractor’s Consultant;

‘Selected Secondary Subcontract Work’ means that work or the supply of those items subcontracted to a Selected Secondary Subcontractor pursuant to Clause 9.4;

‘Selected Secondary Subcontractor’ means a secondary subcontractor carrying out Selected Secondary Subcontract Work;

‘Separable Portion’ means a portion of the work under the Subcontract described in the Subcontract as a Separable Portion or which the Subcontract Superintendent has determined pursuant to Clause 35.4 shall be a Separable Portion;

‘Site’ means the lands and other places to be made available and any other lands and places made available to the Subcontractor by the Main Contractor for the purpose of the Subcontract;

‘Subcontract’ means the agreement between the Main Contractor and the Subcontractor;

‘Subcontract Claim’ has the meaning referred to in Clause 47.5;

‘Subcontract Sum’ means—

- (a) where the Main Contractor accepted a lump sum, the lump sum;
- (b) where the Main Contractor accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Bill of Quantities or Schedule of Rates; or