

ABIC SW 2008

Special conditions – Schedule 2a to Contract

between

OC Plan No. 2983 (99 Spring Street, Melbourne)

and

[Contractor]

Section A – Overview

1. Delete clauses A2.3, A4.1e, A5.4, A5.5 and A5.6 and mark them “Not used”.
2. Insert the following new clauses A3.2 and A3.3:
 - .2 The contractor warrants that:
 - a. prior to executing the contract it:
 - .1 carefully examined the **contract documents* and satisfied itself that they are suitable and adequate for the purpose of constructing the **works* in accordance with the contract
 - .2 informed and satisfied itself of the nature of the work, materials, equipment and construction plant necessary for the performance and completion of the **works* and
 - b. it is satisfied that the **contract price* and date for **practical completion* make sufficient allowance for the performance and completion of the **works* in accordance with the contract.
 - .3 The contractor warrants that it will:
 - a. perform the **works* in a proper and workmanlike manner
 - b. use the materials and standards of workmanship required by the contract. In the absence of any requirement to the contrary, the contractor shall use suitable new materials
 - c. ensure that upon **practical completion*, the **works* are fit for their intended purpose as stated in or reasonably able to be inferred from the **contract documents* and
 - d. ensure that the **works* are undertaken by persons and subcontractors who are suitably qualified and experienced.”

Section C – Security

3. Delete subclause C1.1a.
4. Delete clause C2 and mark it “Not used”.
5. Delete subclause C4.1b and mark it “Not used”.

Section D – Liability

6. Delete clause D4 and subclause D5.2 and mark them “Not used”.

Section E – Insurance

7. Delete clauses E3 and E9 and mark them “Not used”.

Section F – The site

8. Insert the following new clause F10:

"F10 **Occupational Health and Safety**

- .1 The contractor acknowledges and agrees that for the purposes of the **relevant legislation* concerning occupational health and safety, the owner:
 - a appoints the contractor as the "principal contractor" in respect of the **works* and the **site* and
 - b authorises the contractor to manage and control the **site* to the extent necessary to discharge the duties imposed on a "principal contractor" under the **relevant legislation* concerning occupational health and safety for the **works*.
- .2 The contractor shall:
 - a comply with all applicable **relevant legislation* concerning occupational health and safety and ensure that its subcontractors and their respective employees and contractors comply with such **relevant legislation*
 - b ensure that safe access is provided to the **site* and that a safe workplace is provided
 - c **promptly* take all precautions and measures necessary to eliminate or overcome conditions that involve any risk of bodily harm to workers and other persons and any risk of damage to property and
 - d notify the architect in writing **promptly* after becoming aware of any environmental incident, harm, potential harm or any non-compliance with any **legislative requirement* concerning occupational health and safety on **site* whether caused by the contractor or others.
- .3 The contractor indemnifies the owner against any loss, damage, action, suit, claim, prosecution, demand, cause of action, proceedings or notice arising out of or in connection with a breach or an alleged breach of the contractor's obligations under this **clause F10.**"

Section G – Building the works

9. Insert the following new subclause G4.4:

"The contractor must obtain the architect's prior written approval, which approval must not be unreasonably withheld, to subcontract (or allow a subcontractor to subcontract) any work set out in **item 31 of schedule 1.**"

10. Insert the following new clauses G10 and G11:

"G10 **Suspension for cause**

- .1 The architect may instruct the contractor to suspend the whole of the **works* for such time as the architect thinks fit, if the architect is of the opinion that it is necessary:

- a because of an act, default or omission of:
 - .1 the architect, the owner or a person for whom the owner is responsible or
 - .2 the contractor, a subcontractor or either's employees or agents
 - b for the protection or safety of any person or property or
 - c to comply with a court order.
- .2 If the contractor wishes to suspend the whole of the **works*, otherwise than pursuant to clause **Q12**, the contractor shall obtain the architect's prior written approval. The architect may approve the suspension and may impose conditions of approval.
 - .3 As soon as the architect becomes aware that the reason for any suspension no longer exists, the architect shall direct the contractor to recommence suspended **works* as soon as reasonably practicable. The contractor may recommence the **works* suspended pursuant to **subclause G10.2** at any time after reasonable notice to the architect.

G11 **Suspension for owner's convenience**

- .1 At the owner's request, the architect must instruct the contractor to suspend the whole of the **works* for the owner's convenience. The contractor must **promptly* comply with the instruction.
- .2 If the suspension continues for more than 20 **working days* the contractor may within a further 10 **working days* terminate its engagement in accordance with **clause Q13** as if it has already given the notice of termination under clause **Q12**.
- .3 After an instruction to suspend the **works* has been given and the owner wishes to recommence the **works*, the architect must instruct the contractor in writing to recommence the **works*. The contractor must promptly comply with the instruction. If the contractor has left the **site*, it must promptly return to the **site* and proceed with the **works*."

Section J – Variation to the works

11. Delete subclause J2.1 and substitute the following:

"J2.1 The contractor must **promptly* review any written instruction issued by the architect under **subclause J1.1**. Within 5 **working days* of receipt of such instruction, the contractor must notify the architect in writing whether the instruction is in the nature of an instruction referred to in **subclause J2.2** or **subclause J2.3**, specifying which."

12. In subclause J2.4, delete the expression "20 **working days*" and substitute:

"10 **working days* of receipt of an instruction issued under **subclause J1.1**"

Section L – Adjustment of time

13. Delete subclause L1.1a and substitute the following:

"a loss of or damage to the **works*, or materials or equipment on the **site* that are intended to be incorporated in the **works*, or plant or equipment used on the

**site*, provided that loss or damage was caused by an act or omission of the owner or a person for whom the owner is responsible"

14. Delete subclause L1.1c and substitute the following:
 - "c an architect's instruction, other than an instruction having the effect of directing that the contractor carry out the **works* in accordance with the **contract documents*"
15. Insert new subclause L1.1k:
 - "k an event of Force Majeure."
16. Insert at the foot of subclause L1.1:
 - "provided the contractor is or will be delayed in reaching **practical completion* by the date for **practical completion* by that cause."
17. Insert the following new subclauses L6.4 and L6.5:
 - "4 For the avoidance of doubt, references in this **clause L6** to causes of delay are references to the causes of delay set out in and complying with **subclause L1.1** unless otherwise stated.
 - .5 When a cause of delay set out in **subclause L1.1** overlaps with a cause of delay not set out in subclause **L1.1**, the contractor is entitled to an adjustment of time equal to the proportion of the delay to **critical construction activities* to which a cause set out in **clause L1.1** contributed."

Section M – Completion of the works

18. Insert the following new subclause M1.1d as follows:
 - "d all keys and security access arrangements, all operating and maintenance manuals, and warranties for equipment incorporated in the **works* or installed by or for the contractor, have been provided to the architect."
19. Delete subclauses M8.2 and M8.3 and mark them "Not used".
20. Delete subclause M12.2 and mark it "Not used".

Section N – Payment for the works

21. Insert at the end of subclause N3.2b:
 - “, provided the materials and equipment are insured by the contractor, and provided the materials and equipment are labelled as the property of the owner subject to payment of the claim”
22. Amend subclause N3.3 such that every occurrence of "declaration" is preceded by the word "statutory".
23. Insert at the end of subclause N4.2c:
 - “, and provided the other matters set out in **subclause N3.2b** are satisfied”
24. Delete subclauses N8.2 and 8.3 and mark them "Not used".
25. Amend subclause N10.2 such that the word "declaration" is preceded by the word "statutory".

Section Q – Termination of engagement

26. Delete subclauses Q12.3 and Q12.4 and mark them "Not used".

27. Delete the contents of subclause Q13.1 and substitute:

"Within 20 *working days* after the contractor has given the owner written notice of suspension under **clause Q12**, the contractor may terminate its engagement under this contract by giving the owner written notice of termination."

28. Delete the contents of subclause Q15.1 and substitute:

"If the contractor terminates its engagement under **clause Q13** or **Q14**, the owner must pay the contractor the amount the owner would have had to pay if the owner had wrongfully repudiated the contract. If the contractor terminates its engagement under **clause Q13**, the contractor is not entitled to a quantum meruit."

Section R – Miscellaneous

29. Insert the following new clause R14:

"R14 Security of Payment Act

- .1 The owner appoints the architect as its agent for the purposes of receiving service of a payment claim, providing a payment schedule, receiving service of an adjudication application, lodging and serving an adjudication response and the giving and receiving of all other notices or documents under the **Security of Payment Act*.
- .2 If the contractor becomes aware that a subcontractor or supplier has or claims an entitlement to suspend work pursuant to the **Security of Payment Act*, it must **promptly* provide the architect with a copy of any written communication in respect of such suspension.
- .3 The times set out in **item 26** of **Schedule 1** for submission of claims for progress payments are reference dates.
- .4 If the owner becomes aware that a subcontractor or supplier has or claims an entitlement to suspend work pursuant to the **Security of Payment Act*, the owner may (in its absolute discretion) pay the subcontractor or supplier such money that is or may be owing to it for any **necessary work*, materials or equipment necessary to progress or complete the **works*. Any sum paid by the owner to a subcontractor or supplier is to be taken into account by the architect in preparing its certificate under **clause N4**, provided the owner has not already paid the contractor for the same."

Section S – Definitions

30. Insert the following new definitions (alphabetically)

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| <p><i>"event of Force Majeure</i></p> | <ol style="list-style-type: none"> a. earthquake, named tropical cyclone, declared natural disaster, tsunami, or explosion caused by any of these b. war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like |
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hostilities, or explosion caused by any of these

- c. chemical, nuclear or biological contamination
- d. ionising radiation or contamination by radioactivity
- e. an act of terrorism except to the extent insured, including as a result of the *Terrorism Insurance Act 2003* (Cth) or
- f. epidemic or pandemic,

which:

- g. occurs at or directly in the vicinity of the **site* and
- h. prevents the contractor from carrying out all or a material part of its obligations under the contract.”

“*Security of Payment Act*

Building and Construction Industry Security of Payment Act 2002 (Vic). Defined terms in the **Security of Payment Act* have the same meaning where used in **clause R14.**”