

Australian/New Zealand Standard™

**General conditions of contract for the
supply of equipment without installation**

AS/NZS 4911:2003

This Joint Australian/New Zealand Standard was prepared by Joint Technical Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 18 June 2003 and on behalf of the Council of Standards New Zealand on 24 July 2003.

This Standard was published on 22 August 2003.

The following are represented on Committee OB-003:

Association of Consulting Engineers Australia
Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Engineers, Australia
Institution of Professional Engineers, New Zealand
Law Council of Australia
Master Builders Australia
National Construction Council of the Australian Industry Group
Process Engineers and Constructors Association
Royal Australian Institute of Architects

Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about joint Australian/New Zealand Standards can be found by visiting the Standards Web Shop at www.standards.com.au or Standards New Zealand web site at www.standards.co.nz and looking up the relevant Standard in the on-line catalogue.

Alternatively, both organizations publish an annual printed Catalogue with full details of all current Standards. For more frequent listings or notification of revisions, amendments and withdrawals, Standards Australia and Standards New Zealand offer a number of update options. For information about these services, users should contact their respective national Standards organization.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Please address your comments to the Chief Executive of either Standards Australia or Standards New Zealand at the address shown on the back cover.

This Standard was issued in draft form for comment as DR 00328.

AS/NZS 4911:2003
(Incorporating Amendment No. 1)

Australian/New Zealand Standard™

General conditions of contract for the supply of equipment without installation

Originated as AS 3556—1988 and AS 3557—1998.
Previous edition AS/NZS 4911: 1998.
Second edition 2003.
Reissued incorporating Amendment No. 1 (March 2005)

COPYRIGHT

© Standards Australia/Standards New Zealand

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the written permission of the publisher.

Jointly published by Standards Australia, GPO Box 5420, Sydney, NSW 2001 and Standards New Zealand, Private Bag 2439, Wellington 6020

ISBN 0 7337 3606 8

Preface

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB-003, General Conditions of Contract to supersede AS/NZS 4911:1998.

This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as a Joint Australian/New Zealand Standard.

AS/NZS 4911:2003, *General conditions of contract for the supply of equipment without installation* is part of the suite of conditions of contract based on AS 4000—1997, *General conditions of contract*.

This Standard is for the supply of equipment, including building elements, which is purpose-built or manufactured. If installation is required, AS 4910—2002, *General conditions of contract for supply of equipment with installation* should be used.

Separable portions may be appropriate in contracts where equipment is being supplied for use at different times or stages. If so, the *Items* prefixed by † are to be deleted in Annexure Part A and that part of Annexure Part A entitled ‘Separable Portions’ is to be completed for each separable portion.

Clause 29 and subclause 6.6 prefixed by * are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these clauses or indicating clearly in Annexure Part C or elsewhere that they are not to apply. See paragraph i) of clause 1 on page 4 for the effect of stating changes in Annexure Part C.

Warnings

- 1) **Users of this Standard are warned that clause 12 (Supplier’s indemnity) does not limit the liability of parties for special, indirect or consequential losses.**

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clause 13 (Insurance). However, optional clause 29 (General limitation of liability) allows the parties to agree to limit their liability in certain respects.

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- 2) **For the purposes of clause 11, the inclusion of Quality Assurance requirements in the Contract will require detailed clauses which have regard to the quality standard selected.**
- 3) **Users of this Standard should ensure the availability of appropriate insurances if risk in the equipment is not to pass to the Purchaser upon delivery.**
- 4) **Users of this Standard should be aware of relevant legislation relating to the sale and supply of goods in the Commonwealth of Australia, each State or Territory of Australia and New Zealand.**

- 5) 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.

Content

Clause	Title	Page
1	Interpretation and construction of Contract	1
2	Nature of Contract	4
3	Security	4
4	Evidence of Contract	5
5	Service of notices	6
6	Contract documents	6
7	Assignment and subcontracting	7
8	Intellectual property rights	8
9	Designated items	8
10	Legislative requirements	9
11	Quality assurance	9
12	Supplier's indemnity	10
13	Insurance	10
14	Directions	12
15	Programming	12
16	Suspension	13
17	Time	14
18	Testing	15
19	Delivery	16
20	Risk in and ownership of the Equipment	16
21	Acceptance or rejection of Equipment	17
22	Defects liability	19
23	Variations	20
24	Payment	21
25	Default or insolvency	22
26	Termination by frustration	25

27 Notification of claims

25

Clause	Title	Page
28	Dispute resolution	26
29	General limitation of liability	26
30	Waiver of conditions	27
	Annexure Part A	29
	Annexure Part B	38
	Annexure Part C	39
	Index	41

1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

Item means an *Item* in Annexure Part A;

acceptable means:

- a) the *Equipment* is substantially in accordance with the requirements of the *Contract* except for minor *defects* which do not:
 - i) prevent the *Equipment* from being reasonably capable of being used for the stated purpose in *Item 5* or elsewhere stated in the *Contract*; or
 - ii) if no such purpose is stated, adversely affect the normal use of the *Equipment*;
- b) where the *Contract* so requires, the *Equipment* satisfies *acceptance testing*; and
- c) manuals, documents and other information required under the *Contract* have been supplied;

acceptance means notification under subclause 21.1 or 21.8 by the *Purchaser* that the *Equipment* is *acceptable*;

acceptance testing means testing referred to in subclause 18.1;

compensable cause means:

- a) any act, default or omission of the *Purchaser* or its consultants, agents or other contractors (not being employed by the *Supplier*); or
- b) those listed in *Item 24(a)*;

Contract has the meaning in clause 4;

contract sum means:

- a) where the *Purchaser* accepted a lump sum, the lump sum;
- b) where the *Purchaser* accepted unit prices, the sum of the products ascertained by multiplying the quantity of *Equipment* and the corresponding unit prices in the *schedule of unit prices*; or
- c) where the *Purchaser* accepted a lump sum and unit prices, the aggregate of the sums referred to in paragraphs (a) and (b),

excluding any additions or deductions which may be required to be made under the *Contract*;

date for delivery means:

- a) the date; or
- b) the last day of the period,

if any, stated in *Item 6*, but if any *EOT* for *delivery* is directed by the *Purchaser* or allowed in any arbitration or litigation, it means the date resulting therefrom;