

Australian Standard[®]

**Consultants agreement—Design and
construct**



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- AUSTRROADS
 - Association of Consulting Engineers Australia
 - Australian Chamber of Commerce and Industry
 - Australian Constructors Association
 - Australian Industry Group
 - Australian Procurement and Construction Council
 - Construction Industry Engineering Services Group
 - Engineers Australia
 - Master Builders Australia
 - Royal Australian Institute of Architects
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Standards Australia wishes to acknowledge the participation of the expert individuals that contributed to the development of this Standard through their representation on the Committee.

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construct**

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Preface

This Standard was prepared by the Standards Australia Committee MB-010, General Conditions of Contract and by Committee OB-003, General Conditions of Contract.

This Standard incorporates Amendment No. 1 (January 2010). 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.

AS 4904—2009 *Consultants agreement—Design and construct* is a supplementary document to the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard is intended to be used as contract conditions forming part of a contract between:

- (a) a Consultant and a Principal for the development of preliminary design to form part of the Principal's Project Requirements under AS 4902—2000 *General conditions of contract for design and construct*.
- (b) a Consultant and a Contractor where AS 4902—2000 *General conditions of contract for design and construct* are the contract conditions, in conjunction with the following project procurement methods:
 - (i) design and construct;
 - (ii) design development and construct; or
 - (iii) design, novate and construct.
- (c) a Consultant and a Subcontractor where AS 4903—2000 *Subcontract conditions for design and construct* are the subcontract conditions, in conjunction with the following project procurement methods:
 - (i) design and construct;
 - (ii) design development and construct; or
 - (iii) design, novate and construct.

If either (b) or (c) above applies, and the project procurement method chosen is:

- (a) **design and construct**—the Consultant will be responsible for design to a Contractor engaged in an AS 4902—2000 Contract or to a Subcontractor engaged in an AS 4903—2000 Subcontract (as the case requires).
- (b) **design development and construct**—the Consultant will be responsible for the development of the detailed design from a preliminary design provided by the Principal in an AS 4902—2000 Contract or by the Main Contractor in an AS 4903—2000 Subcontract (as the case requires).

- (c) **design, novate and construct**—the Consultant will be responsible for the development of a preliminary design to the Principal in an AS 4902—2000 Contract or to the Main Contractor in an AS 4903—2000 Subcontract (as the case requires). Subsequent to novation, the Consultant will be responsible for the detailed design to the Contractor in an AS 4902—2000 Contract or to the Subcontractor in an AS 4903—2000 Subcontract (as the case requires).

Clauses prefixed by * may be omitted in the Contract, where necessary, but consequential amendments may be necessary. Such omission should be clearly shown on the face of the document by striking out these clauses and indicating clearly in Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 on page 3 for the effect of stating changes in Annexure Part E.

Users of this Standard are advised of the importance of completing the Annexures, as in some cases completion of the *Item* is necessary for the operation of the corresponding clause.

Warnings

- (1) Users of this Australian Standard are warned that clause 9, Damage to persons or property other than the Services, does not limit the liability of parties for special, indirect or consequential losses, notwithstanding any limitations or exclusions permitted under insurance clauses 10, (Professional indemnity insurance), and 11, (Public liability insurance).
- (2) The Consultant's warranties in subclause 2.2 may impose liability on the Consultant regardless of the Consultant's exercise of due skill, care and diligence. Consultants should seek insurance advice and legal advice before accepting these warranties.
- (3) A Client should ensure that its specific requirements are fully and completely incorporated in its project requirements obtaining specialist advice if necessary. Where a Consultant provides a proposed design as part of its offer, the parties should consider whether that design should form part of the project requirements.
- (4) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for the particular project.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments which may affect Clause 23. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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1 Interpretation and construction of Contract

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

Item means an *Item* in Annexure Part A;

Client means the person stated in *Item 1*;

Client's project requirements means the *Client's* written requirements for *the Services* described in the documents stated in *Item 9* which:

- (a) shall include the stated purpose for *the Services*;
- (b) may include the *Client's* design, timing and cost objectives; and
- (c) where stated in *Item 10*, shall include a *preliminary design*;

compensable cause means:

- (a) any act, default or omission of the *Client* or its consultants, agents or other contractors (not being employed by the *Consultant*); or
- (b) those listed in *Item 22*;

completion means completion of *the Services*;

Consultant means the person bound to carry out and complete *the Services*;

Consultant's design obligations means all those tasks necessary to design and specify that part of the project the subject of *the Services* and, if the documents stated in *Item 9* as describing the *Client's project requirements* include a *preliminary design*, developing the *preliminary design*;

Contract has the meaning in clause 3;

date of acceptance of tender means the date which appears on the written notice of acceptance of the offer;

date for completion means the date in *Item 5*, or that resulting from an *EOT*;

design documents means the drawings, specifications and other information, samples, models, patterns and the like required by the *Contract* and created (and including where the context so requires, those to be created by the *Consultant*) as part of *the Services*;

direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

dispute has the meaning in clause 28;

EOT (from 'extension of time') has the meaning in subclause 21.2;

fee means that fee calculated in accordance with Annexure Part C;

fee adjustment means a sum assessed by the *Client* to be added to or deducted from the *fee*;

final certificate has the meaning in subclause 23.2;

final payment claim means the final payment claim referred to in subclause 23.2;

intellectual property right means any patent, registered design, trademark or name, copyright or other protected right;

key personnel means those personnel stated in *Item 6*;