

Australian Standard™

**Subcontract conditions for design and
construct**

This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
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AS 4903—2000
(Incorporating Amendment No. 1)

Australian Standard™

Subcontract conditions for design and construct

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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

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 an Australian Standard.

AS 4903—2000 *General conditions of subcontract for design and construct* is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (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:

- (a) **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;
- (b) **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;
- (c) **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 25 stating which secondary subcontract (including consultant's agreement) or selected secondary subcontract is to be novated to the Subcontractor.

Subclauses 8.6, 29.2 and 34.7A, 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 subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

WARNINGS

- 1) This Standard is not recommended for use as part of the agreement between the Main Contractor and a consultant. AS 4904—2001 *Consultant's Agreement* has been developed for this purpose.
- 2) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUS) 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 clauses 16A (Insurance of WUS), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

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

- 3) In relation to insurances, the parties should have regard to clause 16A regarding the availability during the tender period of a copy of the insurance policy in relation to WUS, and subclause regarding proof of evidence of insurances generally, before WUS commences under the Subcontract.
- 4) 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 consider whether that design should form part of the Main Contractor's project requirements.
- 5) 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 a particular project.
- 6) Subcontractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- 7) 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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Subcontract conditions for design and construct

1 Interpretation and construction of Subcontract

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

- Item*** means an *Item* in Annexure Part A;
- 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*** has the meaning in subclause 34.6;
- compensable cause*** means:
- (a) any act, default or omission of the *Subcontract Superintendent*, the *Main Contractor* or its consultants, agents or other contractors (not being employed by the *Subcontractor*);
 - (b) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Subcontractor*); or
 - (c) those listed in *Item 35*;
- construction plant*** means appliances and things used in the carrying out of *WUS* but not forming part of the *Subcontract Works*;
- date for practical completion*** means:
- (a) where *Item 11(a)* provides a date for *practical completion*, the date;
 - (b) where *Item 11(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed 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 written notice of acceptance of the tender;
- date of practical completion*** means:
- (a) the date evidenced in a *certificate of practical completion* as 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;