

**Construction of**

**Gloucester Reservoirs & Associated Mains**

**Contract Number: 100120/2**

**Part 1B**

**General Terms and Conditions AS 2124**

**December 2020**

**Construction of Gloucester Reservoirs & Associated Mains**

**Part 1B GENERAL TERMS AND CONDITIONS AS 2124**



[MidCoast Council](#)

**Construction of Gloucester Reservoirs & Associated – Part 1B: General Terms and Conditions AS 2124**

Contract Number: 100120 - 2

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6308054	General Terms	B Baines	M Stace	M Stace	21/12/2020
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100120 - 2		TENDER		1.0	

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AS 2124—1992

With

AS 2125 - 1992

AS 2127 - 1992

(Incorporating Amendment No. 1)

Australian Standard®

**General conditions of contract  
(AS 2124—1992)**

together with

**General conditions of tendering and form of tender (AS 2125—1992)**

**Form of formal instrument of agreement (AS 2127—1992)**



**ANNEXURE to the Australian Standard  
General Conditions of Contract**

# PART A

This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

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The law applicable is that of the State or Territory of: New South Wales.....  
(Clause 1)

Payments under the Contract shall be made at: Taree, NSW.....  
(Clause 1)

The Principal: MID-COAST COUNCIL  
(Clause 2) (Mid-Coast Council Water and Sewerage Branch)  
ABN 44 961 20 8161 .....

The address of the Principal: PO Box482, Taree NSW 2430 Australia

The Superintendent: Manager of Capital Works – Water  
(Clause 2) Services, MidCoast Council  
.....

The address of the Superintendent: PO Box 482, Taree NSW 2430 .....

Limits of accuracy applying to quantities for which the Principal accepted a rate or rates: Not Applicable.....  
(Clause 3.3(b))

Bill of Quantities—the alternative applying: Not Applicable.....  
(Clause 4.1)

The time for lodgement of the priced copy of the Bill of Quantities: Not Applicable.....  
(Clause 4.2)

# Contractor shall provide security in the amount of: 5% of the contract sum.....  
(Clause 5.2)

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# Where there are Separable Portions, these items shall be deleted

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# Principal shall provide security in the amount of: (Clause 5.2)	Not Applicable .....
# The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security: (Clause 5.5)	5 days .....
The percentage to which the entitlement to security and retention moneys is reduced: (Clause 5.7)	50% on date of practical completion obtained.....
Interest on retention moneys and security—the alternative applying: (Clause 5.9)	Not applicable .....
The number of copies to be supplied by the Principal: (Clause 8.3)	One electronic copy only.....
The number of copies to be supplied by the Contractor: (Clause 8.4)	One electronic copy only.....
The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies: (Clause 8.4)	.....
Work which cannot be subcontracted without approval: (Clause 9.2)	An individual subcontract valued at more than \$25,000 .....
The percentage for profit and attendance: (Clause 11(b))	15% .....
The amount or percentage for profit and attendance: (Clause 11(c))	15% .....
Insurance of the Works—the alternative applying: (Clause 18)	Construction insurance provided by the Contractor .....
The assessment for insurance purposes of the costs of demolition and removal of debris: (Clause 18(ii))	.....

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# Where there are Separable Portions, these items shall be deleted



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The assessment for insurance purposes of consultants' fees: (Clause 18(iii))	.....
The value of materials to be supplied by the Principal: (Clause 18 (iv))	.....
The additional amount or percentage: (Clause 18(v))	.....
Public Liability Insurance—the alternative applying: (Clause 19)	Alternative 1 .....
The amount of Public Liability Insurance shall be not less than: (Clause 19)	\$20,000,000 .....
The time for giving possession of the Site: (Clause 27.1)	From the date that MidCoast Council provides written approval of the Contractor's Project Management Plan, Environmental Management Plan, Site Safety Plan and any other documentation required by MidCoast Council as set out in the Preliminaries at clauses 2 – 8 (inclusive) of the Part 1A Tender Requirements and Preliminaries document. - .....
# The Date for Practical Completion: (Clause 35.2)	52 weeks from the execution of the Formal Instrument of Agreement or as negotiated
# Liquidated Damages per day: (Clause 35.6)	\$2000 per day .....
# Limit of Liquidated Damages: (Clause 35.7)	Contract Sum .....
# Bonus per day for early Practical Completion: (Clause 35.8)	Not Applicable .....
# Limit of bonus: (Clause 35.8)	Not Applicable .....
# Extra costs for Delay or Disruption: (Clause 36)	<u>Event</u> ..... ..... .....



	.....
	.....
# The Defects Liability Period: (Clause 37)	12 months .....
The Charge for overheads, profit, etc. for Daywork: (Clause 41(f))	15%, except for any variations using schedule of rates within Part 1C of tender schedules which include profits and overhead .....
Times for Payment Claims: (Clause 42.1)	Last day of the Month.....
Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works: (Clause 42.1(ii))	.....
Retention Moneys on: (Clause 42.3)	.....
	(a) work incorporated in the Works and any work or items for which a different amount of retention is not provided, .....% of the value until .....% of the Contract Sum is held;
	(b) items on Site but not yet incorporated in the Works, .....%;
	(c) items off Site but in Australia .....%;
	(d) items not in Australia .....%;
	(e) disbursements incurred by the Contractor for customs duties, freight, marine insurance, primage, landing and transport in respect of the work under the Contract .....%;
Unfixed Plant or Materials—the alternative applying: (Clause 42.4)	Alternative 1 .....
The rate of interest on overdue payments: (Clause 42.9)	5%.....
The delay in giving possession of the Site which shall be a substantial breach: (Clause 44.7)	28 days after the date of the letter of approval of Project management Plan and any other documentation required by MidCoast Council as set out in the Preliminaries at clauses 2 – 8 (inclusive) of the Part 1A Tender Requirements and Preliminaries document. -

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The alternative required in proceeding with dispute resolution: (Clause 47.2)	Alternative 2 .....
The person to nominate an arbitrator: (Clause 47.3)	The President of the Resolution Institute
Location of arbitration: (Clause 47.3)	Taree, New South Wales.....

**¶ Separable Portions**

- |   |                         |
|---|-------------------------|
| 1. Separable Portion:   | Not Applicable.....     |
| 2. Contractor shall provide security in the amount of:<br>(Clause 5.2)  | .....                   |
| Principal shall provide security in the amount of:<br>(Clause 5.2)  | .....                   |
| The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:<br>(Clause 5.5) | .....                   |
| 3. The Date for Practical Completion:<br>(Clause 35.2)  | .....                   |
| 4. Liquidated Damages per day:<br>(Clause 35.6)   | .....                   |
| 5. Limit of Liquidated Damages:<br>(Clause 35.7)  | .....                   |
| 6. Bonus per day for early Practical Completion:<br>(Clause 35.8)   | .....                   |
| 7. Limit of bonus:<br>(Clause 35.8)   | .....                   |
|   | <u>Event</u>            |
| 8. Extra costs for Delay or Disruption:<br>(Clause 36)  | .....<br>.....<br>..... |
| 9. Defects Liability Period:<br>(Clause 37)   | .....                   |

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¶ Use this part of the Annexure where there are Separable Portions and ensure that the description of the Separable Portions covers all the work under the Contract. Make a separate column for each Separable Portion.



APPROVED FORM OF UNCONDITIONAL UNDERTAKING
(Clause 5.3)

At the request of. . . . . ('the Contractor') and in consideration
of . . . . . ('the Principal') accepting this undertaking in respect of
the contract for.....

. . . . . ('the Financial Institution') unconditionally undertakes to pay on
demand any sum or sums which may from time to time be demanded by the Principal to a
maximum aggregate sum of \$.....

(.....)

The undertaking is to continue until notification has been received from the Principal that the sum
is no longer required by the Principal or until this undertaking is returned to the Financial
Institution or until payment to the Principal by the Financial Institution of the whole of the sum or
such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by
. . . . . for and on behalf of the Principal that the Principal desires payment to
be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial
Institution will make the payment or payments to the Principal forthwith without reference to the
Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do
pay to the Principal the sum of \$ .....

(.....)

less any amount or amounts it may previously have paid under this undertaking or such lesser
sum as may be required and specified by the Principal and thereupon the liability of the Financial
Institution hereunder shall immediately cease.

DATED at.....this.....day of.....19.....

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**ANNEXURE to the Australian Standard  
General Conditions of Contract**

# PART B

NOTE: This table is intended for easy reference to clauses that may have been deleted, amended or added to Australian Standard 2124—1992

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**1. B ANNEXURE PART B**

Part B of the Annexure to the General Conditions of Contract shall be deemed to be completed as follows:

**B1 ADDITIONS**

The following clauses have been added to those of AS 2124-1992 as amended:

**B1.1.1 The Primary Documents**

The Contract Documents included in the Formal Instrument of Agreement includes “Specification Documents” (referred to herein as “**the Primary Documents**”) which are following-supplied by the Principal.

No inference should be drawn from the fact that an item is shown as required in one place, or several places, but is not shown elsewhere in the Primary Documents. It may be that to complete the work in a workmanlike manner or in accordance with the requirements of the law or the Building Code of Australia or to make the Works suitable for purpose, the Contractor will have to provide the item in other places also.

**B1.1.2 Conflicts in Primary Documents**

The Primary Documents may contain errors and omissions-or may be inconsistent or misleading. They may conflict with statutory requirements or the requirements of the Building Code of Australia or some other code or standard which the Contract requires the Contractor to follow. The Principal is relying upon the Contractor to find and overcome these problems.

**B1.1.3 Design**

The Contractor must complete the design provided in the Primary Documents, including designing those aspects of the work under the Contract which have not already been designed. Any such design work by the Contractor must be undertaken in accordance with clause B1.2, using the degree of care, skill and diligence required of a reasonable person in the profession of the Contractor who represents that it is a specialist in civil engineering and the construction of water mains and construction of water reservoirs and construction of chlorine dosing systems and construction of buildings and construction of electrical switch rooms and must otherwise satisfy the Contract in all respects.

Completion of the design includes, but is not limited to:

- (a) Air Conditioning System;
- (b) Cable tray layout and support and associated works;
- (c) Shop drawings;
- (d) Services locations and interface inconsistencies;
- (e) Cathodic Protection
- (f) Surge Vessel

#### **B1.1.4 Corrections**

If any of the documents supplied by the Contractor to the Superintendent contain errors, the Contractor must supply to the Superintendent corrected documents prior to commencing construction. This is in addition to any requirements under *Clause 8.4 of the General Conditions of Contract*.

#### **B1.2 CONTRACTOR'S FURTHER DESIGN OBLIGATIONS**

This clause only applies to the elements of the work under the Contract where the Contract (including the Specification) identifies that the Contractor is responsible for the design of those elements or where the contractor otherwise performs design works.

##### **B1.2.1 Definitions**

In this clause:

- (a) **Contractor Designed Works** means any work under the Contract or Works in respect of which the Contractor is required by the Contract to provide the Contractor's Design Work;
- (b) **Contractor's Design Documents** means all designs, drawings, specifications, surveys, reports, models, patterns, samples and other information required in connection with the Contractor's Design Work;
- (c) **Contractor's Design Work** means all work under the Contract relating to the design and specification of work under the Contract or the Works, including the preparation of drawings, specifications or the Design Documents for the construction of the Works; and
- (d) **Principal's Requirements** means the Requirements stated in the Specification summarising or outlining the Principal's requirements for the Contractor's Design Work or work under the Contract to which the Contractor's Design Work relates, as they may be developed or updated by the Contractor in accordance with the Contract and approved by the Principal.

##### **B1.2.2 Acknowledgment by Contractor**

The Contractor confirms that the description of the work under the Contract set out in the Contract is adequate for the Contractor to complete any Contractor's Design Work in accordance with the Contract and has satisfied itself as to the Principal's requirements.

### **B1.2.3 Contractor's Design Work**

In respect of the Contractor Designed Works, the Contractor must carry out all Contractor's Design Work (including undertaking any design or redesign) required to give effect to any Variation or to ensure that the Works comply with the requirements of the Contract despite any Latent Conditions discovered after the Date of Acceptance and complete all Contractor's Design Documents required for the construction of the Works.

### **B1.2.4 Fit for Purpose**

Without limiting any other obligation of the Contractor under the Contract, the Contractor must complete the Contractor's Design Work in respect of Contractor Designed Works so that:

- (a) the construction of the Works may be commenced within the time required by the Contract and so as to enable the Practical Completion to be reached by the Date for Practical Completion;
- (b) the Contractor's Design Work and all Contractor's Design Documents prepared by the Contractor comply fully with the Principal's Requirements and all other requirements for the Works including the Specification and Drawings and are fit for their purpose;

and shall execute and complete the work under the Contractor in accordance with the Contractor's Design Work and the Contractor's Design Documents.

### **B1.2.5 Design Completed**

The Contractor will not commence any construction in connection with any part of the Contractor Designed Work until:

- (a) the Contractor's Design Work relating to that part has been completed in accordance with the Contract; and
- (b) Contractor's Design Documents relevant to the Contractor's Design Work have been submitted to the Superintendent and the Superintendent has consented to their use for the purpose of work under the Contract.

Within 10 days of receiving any of the Contractor's Design Documents, the Superintendent must, in writing:

- (c) Approve the Contractor's Design Documents; or
- (d) Reject the Contractor's Design Documents with reasons identifying in what respects the Contractor's Design Documents do not comply with the reasonable requirements of the Principal.

### **B1.2.6 Consent**

The parties acknowledge that:

- (a) if the Superintendent refuses consent to Contractor's Design Documents submitted by the Contractor for consent pursuant to clause B1.2.5(d), the Contractor will resubmit the Contractor's Design Documents amended to take account of the Superintendent's comments and the provisions of clause B1.2.5 will apply again; and
- (b) if for any reason the Contractor wishes to amend any Contractor's Design Document after the Superintendent has consented to its use, the Contractor must resubmit the amended Design Documents (indicating how it has been amended) for the Superintendent's further consent and clause B1.2.5 will apply again.
- (c) the Contractor's Design Work must be consistent with, and not deviate from:
  - (i) any Contractor's Design Document submitted to the Principal as part of, or in connection with, the Contractor's tender;
  - (ii) any Contractor's Design Documents previously prepared and approved or taken to have been approved by the Superintendent for the purposes of the Contractor; and
  - (iii) the Contract and any Drawings and Specifications provided by or on behalf of the Principal;except to the extent that:
  - (iv) the Principal has notified the Contractor that any part of such Contractor's Design Documents are not accepted by the Principal or the Superintendent; or
  - (v) the Principal has agreed in writing to such inconsistency or deviation.
- (d) For the avoidance of doubt, this clause is not intended to limit the operation of clause B1.2.5 and the Principal may reject the Contractor's Design Documents in accordance with clause B1.2.5 any number of times."

#### **B1.2.7 Obligations Unaffected**

The Contractor agrees that the requirement for it to obtain the Superintendent's consent to the use of any Contractor's Design Document is not to be taken to impose on the Principal any obligation in respect of the Contractor's Design Work and neither:

- (a) the Superintendent's consent to the use of any Contractor's Design Document; nor
- (b) the Superintendent's comment or failure to comment upon, review or non-review of or rejection or non-rejection of any Contractor's Design Documents;

will relieve the Contractor from any of its obligations or liabilities under the Contract or entitle the Contractor to any Claim.

### **B1.3 CONSTRUCTION**

The Contractor must construct the Works in accordance with the Contractor's construction documents, including, without limitation, the Primary Documents, and the documents specified in clause 1 of the Formal Instrument of Agreement. Without limiting the generality of that obligation, construction must satisfy the requirements of the Primary Documents using the degree of care, skill and diligence required of a reasonable person in the profession of the Contractor who represents that it is a specialist in civil engineering and the construction of water mains, construction of water reservoirs, construction of chlorine dosing systems, construction of buildings and construction of electrical switch rooms.

### **B1.4 WARRANTIES**

#### **B1.4.1 Contractor Warranties and Acknowledgments**

The Contractor warrants and acknowledges (in addition to any other warranties given in the Contract):

- (a) that it is a suitably qualified, experienced and competent specialist civil engineering contractor with relevant experience in civil engineering works, including the engineering and the construction of water mains and construction of water reservoirs and construction of chlorine dosing systems and construction of buildings and construction of electrical switch rooms and similar works;
- (b) that it will use all due skill, care and diligence in completing the Works and conducting any works under this Contract expected of a reasonable person in the profession of the Contractor who represents that it is a specialist in civil engineering and the construction of water mains and construction of water reservoirs and construction of chlorine dosing systems and construction of buildings and construction of electrical switch rooms;
- (c) that it has informed itself as to the nature of the Works, including materials, plant and equipment to be supplied;
- (d) that the part of the Works that it designs and constructs will be fit for purpose;
- (e) That, in respect of any part of the Works not referred to in clause B1.4.1(e), that part of the Works has been completed to the necessary standard set out in this Contract and constructed carefully, safely, to a high quality and accurately and correctly in accordance with the design."
- (f) that any personnel engaged by the Contractor to carry out works under the Contract (whether they are employees of the Contractor, sub-contractors or employees of sub-contractors) are competent and have qualifications and experience appropriate to the tasks they will perform under this Contract;

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- (g) that any review or acceptance of the Works by the Principal or Superintendent does not relieve the Contractor from responsibility for errors, omissions or failure to comply with the Contract; and
- (h) that the Principal has relied on these representations in entering into the Contract and that the Principal would not have entered into the Contract in the absence of such representations and warranties.

**B1.4.2 Express Warranty on Compliance**

There will be deemed to be an express warranty by the Contractor that what the Contractor supplies or constructs will meet requirements of the documents specified in the Contract, unless the Contractor has **expressly warned** the Principal in the tender that what the Contractor offers will not meet some or any of these requirements.

**B1.5 WORK METHOD**

If the Contract prescribes a particular work method or the Principal or Superintendent directs that a particular work method must be used to the exclusion of other work methods, then that work method is part of the Contract.

Otherwise, the work method is not part of the Contract and the Contractor is free to use any work method, at its own discretion. This is so even though, before or after acceptance of the tender, the Contractor made known to the Principal the Contractor's proposed work method and the Principal accepted or approved it.

If the work method is not part of the Contract, the fact that the proposed work method is impractical or impossible or the Contractor, with or without the approval of the Superintendent, uses another work method will:

- (a) Not entitle the Contractor to make a claim on the Principal;
- (b) Not be grounds for an extension of time for Practical Completion;
- (c) Not cause the Contract to be frustrated.

**B1.6 SECURITY OF PAYMENT**

**B1.6.1 General**

In this clause "subcontract" includes an agreement for supply of goods or services (including professional services and plant hire) or both and "subcontractor" includes a supplier of goods or services (including professional services and plant hire) or both.

The Contractor shall ensure that each subcontract, whether written or oral, entered into by the Contractor or any subcontractor in respect of the work under the Contract and which has a value of \$25,000 or more at the commencement of the subcontract, includes provisions in the form or to the

effect of the form, as the case may be, of those contained in this clause, including the provisions of this subclause.

### **B1.6.2 Options as to Form of Security**

Each subcontract which -

- (a) requires the subcontractor to provide a cash security to its principal;
- (b) Allows the subcontractor's principal to deduct retention moneys from any payment made by it to the subcontractor; or
- (c) Provides for both (a) and (b) of this subclause.

Shall allow the subcontractor the option at any time to provide an unconditional undertaking or unconditional undertakings in lieu of a cash security or retention moneys. To the extent that the subcontractor provides an unconditional undertaking or undertakings, the subcontractor's principal shall not deduct retention moneys and shall forthwith release to the subcontractor any retention moneys or cash security then held.

### **B1.6.3 Trust for Cash Security and Retention Moneys**

Each subcontract shall include a provision having the effect that:

- (a) When a party receives or retains security in cash or converts security to cash, that security is held in trust by the security holder from the time of receipt, retention or conversion, as the case may be, and the security holder must forthwith deposit the money into a trust account in a bank selected by that party;
- (b) the moneys shall be held in trust for whichever party is entitled to receive them until they are paid in favour of that party and the security holder shall maintain proper records to account for such moneys; and
- (c) Any interest earned by the trust account shall not be held in trust, and shall be owned by the party holding the security.

If the party holding security has a policy of insurance protecting subcontract payments due to the other party which is equivalent to the HIA Security of Payment Bond, then compliance with (a) to (c) of this subclause is not required.

Whenever requested by the Principal to provide evidence verifying that the Contractor is holding in trust an amount which the Contractor should be holding in trust, the Contractor shall provide evidence to the reasonable satisfaction of the Principal that the amount is held in trust. If the Contractor fails to do so then, in addition to any other remedy which the Principal may have against the Contractor, the Principal may withhold an equivalent amount from payments to the Contractor.

### **B1.6.4 Payments**

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- (a) Each subcontract shall include:
- (i) an obligation for the subcontractor's principal to pay the subcontractor regular progress payments of 100% of the value of work, goods or services provided by the subcontractor less only retention moneys, if any, paid into the trust account referred to in subclause TRUST FOR CASH SECURITY AND RETENTION MONEYS.
  - (ii) An entitlement to progress payments within a period not exceeding,
    - In the case of the Contractor's subcontractors, 35 days;
    - In the case of all other subcontractors, 42 days,After the date upon which a progress claim, which includes work, goods or services provided under the subcontract, is lodged by the Contractor with the Superintendent.
  - (iii) Provisions equivalent to the next two paragraphs of this subclause.
- (b) Nothing in this subclause shall be read so as to prevent the Contractor from paying a subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in (b) of this subclause.
- (c) If any provision of the first paragraph of this subclause is inconsistent with any other provision in a subcontract, the provisions of the first paragraph shall prevail to the extent of the inconsistency.

**B1.6.5 Interest on Overdue Payments**

Each subcontract shall include provisions equivalent to Clause 42.7 of the General Conditions of Contract and shall prescribe a rate on interest which is not less than the rate prescribed pursuant to that clause.

**B1.6.6 Alternative Dispute Resolution**

- (a) Subject to clause B1.6.6(b), each subcontract shall include provisions incorporating the dispute resolution procedures outlined in the Contract except that, in each case, it shall not be mandatory for the subcontractor to pursue the contractual dispute resolution mechanism if the only remedy sought by the subcontractor is an order that the subcontractor's principal pay to it an amount which is not disputed to be due and payable under the subcontract.
- (b) The parties agree that, to the extent of any subcontract entered into by the Contractor, the "alternative required in proceeding with dispute resolution" (as specified in Clause 47.2 of the General Terms and Conditions and located on page 7 of Part A to the General Terms and Conditions) will be Alternative 1 for any subcontract entered into by the Contractor.

#### **B1.6.7 Documents to be provided to Subcontractors**

Each subcontract shall include a provision which requires the Contractor to provide to the subcontractor, before the subcontractor commences work under the subcontract, a copy of the following provisions of the Contract between the Contractor and the Principal:

- The provisions equivalent to this clause SECURITY OF PAYMENT.
- The clauses relating to proof of payment of subcontractors, times for payment claims and payment, interest on overdue payments and alternative dispute resolution.

#### **B1.7 TERMINATION FOR THE PRINCIPAL'S CONVENIENCE**

The Principal may terminate the Contract by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons. The Contractor must leave the Site by the date stated in the termination notice and remove all plant, equipment and amenities it has brought onto the Site for the construction of the Works.

After termination for the Principal's convenience, the Principal must pay the Contractor:

- the value of all work carried out (as determined in clause 42) to the date the termination notice takes effect, after taking into account previous payments and any deductions under clause 42
- the cost of materials reasonably ordered by the Contractor for the Works which it is legally liable to accept, but only if on payment the materials become the property of the Principal, free of any encumbrance
- the reasonable, direct costs of removal from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs
- an amount of 2% of the unpaid portion of the Contract Price and
- Costs reasonably incurred by the Contractor in the expectation of completing the Works and not included in any other payment by the Principal.

The Principal must return the security, subject to its rights under the Contract.

The payments to the Contractor referred to in this clause are full compensation for termination under this clause, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

The Contractor must, wherever possible, include in all subcontracts and supply agreements an equivalent provision to this clause.

#### **B1.8 LATENT CONDITIONS**

Notwithstanding anything in Clause 12 of the General Conditions, the Contractor will not be entitled to any extra remuneration as a consequence of a Latent Condition or any delay or additional cost caused by or arising from the Latent Condition. In the event that a Latent Condition is such that

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without a direction by the Superintendent under Clause 40.1 to vary the work, the Contract would be terminated by the doctrine of frustration, the Contractor must notify the Superintendent in writing forthwith. If, in order to avoid the Contract being terminated by frustration, the Superintendent orders a variation under Clause 40.1, the parties' entitlement, if any, in carrying out the variation shall not be affected by this paragraph.

**B1.9 PRELIMINARIES**

For the avoidance of all doubt, the Preliminaries contained in clauses 2 – 8 (inclusive) of the *“Part 1A Tender Requirements and Preliminaries”* are incorporated as special conditions to the General Conditions of Contract.

**B1.10 WITNESS AND HOLD POINTS**

For the avoidance of doubt, the follow applies to the Witness and Hold Point process described in *“Part 1A Tender Requirements and Preliminaries”*:

- (a) The Principal will be entitled to carry out any inspection or testing as it may require to determine whether or not the Works, or any part thereof, that are the subject of a Hold Point have been constructed in a proper and workmanlike manner and are compliant with the Specifications and Contract.
- (b) Upon the Contractor achieving a Hold Point identified in the Contract, the Contractor will provide the Principal with notice of that event. Within 3 days of the contractor issuing such notice, the Principal must inspect the work subject of the Hold Point and provide written notice (**“Hold Point Notice”**) to the Contractor that will contain the following information:
  - (i) whether or not the relevant Hold Point has satisfied the requirements of the Contract;
  - (ii) if the Hold Point has satisfied the requirements of the Contract, confirmation that the Contractor can proceed to the next stage of the Works;
  - (iii) if the relevant Hold Point has not satisfied the requirement of the Contract, particulars of the non-conformance and details of any rectification works that need to be completed by the Contractor in order to satisfy the Hold Point;
- (c) If the Hold Point Notice requires further rectification works to be completed, the Contractor will have a period of 30 days from the date of the Notice to complete those works.
- (d) If the Contractor does not complete the rectification works in accordance with the Hold Point Notice, the Principal may suspend the Works.
- (e) The Contractor will not proceed to the next stage of the Works until it has received the Hold Point Notice from the Principal confirming that the relevant Hold Point has been satisfied.

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- (f) If Works are carried out prior to the Principal issuing a Hold Point Notice confirming that approval has been granted, the Principal will be entitled to suspend the Works and require that the Contractor rectify the Works in order to satisfy the Hold Point.
- (g) Any approval provided to the Contractor by the Principal to proceed to the next stage of Works following satisfaction of a Hold Point under this Agreement does not:
  - (i) prevent the Principal from directing the Contractor to conduct rectification works to items that have been compliant under an earlier Hold Point Notice; or
  - (ii) lessen or otherwise affect the Contractor's obligations under the Contract or otherwise according to law; or
  - (iii) in any way impose any obligation or responsibility on the Principal for any error, omission or failure on behalf of the Contractor to comply with the requirements of this Contract or any other law.

**B1.11 MANUFACTURER'S WARRANTIES**

Prior to the issue of the Certificate of Practical Completion, the Contractor will prepare a list and supply details of the manufacturer or supplier warranties or guarantees provided in respect of the items of mechanical or electrical equipment and any other ~~all~~ guarantees or warranties which have been incorporated into the Works, including guarantees and warranties that are obtained by sub-contractors of the Contractor. The Contractor must ensure that these guarantees and warranties are assigned by the supplier to the Principal or that the Principal will have the benefit of these guarantees and warranties, from the Date of Practical Completion and end no earlier than the expiration of the Defects Liability Period, or any other minimum statutory period. The issue of a Certificate of Practical Completion is subject to the Contractor satisfying the requirements of this clause.

**B1.12 WORKPLACE HEALTH AND SAFETY**

For the avoidance of all doubt, the Contractor will be responsible for Workplace Health and Safety in relation to the Works and the Site and will comply with all relevant legislation, industry codes of practice, safety standards and guidelines and the Contractor will be liable for and indemnify the Principal in relation to any failure to comply or breach of its obligations.

**B1.13 ACCESS**

The Contractor shall ensure the Principal, the Superintendent and their agents and anyone else nominated by the Superintendent are allowed to access any place where any part of the Works is situated or any of the Work under the Contract is being carried out (including at a location other than the Site), for the purposes of inspection and testing.

**B1.14 INTELLECTUAL PROPERTY**

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- (a) Title to and ownership of all Intellectual Property Rights in relation to the Works or all other Contract material, Drawings and Specifications in connection with the Works will, upon its creation, vest in the Principal.
- (b) For the purpose of this clause B1.15, **Intellectual Property (IP) Rights** means all rights, including copyright, in all inventions, models, designs, drawings, plans, specifications, software, reports, proposals and other materials created or generated by either Party under this Contract (whether alone or otherwise, its other employees or contractors) for use in relation to, or in any way connected to, the project or the Works;

**B1.15 PRECEDENCE OF CONTRACT DOCUMENTS**

- (a) Notwithstanding any other term of this Contract, the priority or precedence of the Contract Documents will be set out in the Formal Instrument of Agreement.
- (b) For the avoidance of doubt, to the extent any conflict exists within or between parts of the Contract Documents in relation to quality standards including legislation, codes or standards applicable to the Contractor's performance of the Works, the most stringent provision of such contract term, legislation, codes or standards will prevail.

**B1.16 EXCLUSION OF SCHEDULE 8 OF CONTRACTOR'S TENDER SUBMISSION (NON-CONFORMANCE SCHEDULE)**

Schedule 8 of the Contractor's tender submission documents (being a non-conformance schedule) is hereby expressly excluded from the Contract.

**B1.17 NO FETTER OF DISCRETION OR REGULATORY POWERS**

- (a) The Principal is a county council and enters into this Contract in its services capacity and not in exercise of any regulatory function or power. If the Principal exercises a regulatory function or power, it will be taken to be a third party to this Contract.
- (b) This Contract, will not preclude or pre-empt the exercise by the Principal of any regulatory function or power.
- (c) This Inspection Agreement will not fetter, in any way, any discretion that the Principal is entitled to exercise as a regulatory authority.
- (d) The Principal will not be responsible to the Contractor for any loss that the Contractor suffers, including consequential loss and loss of profits, as a result of any exercise, or proposed exercise of the Principal's regulatory powers or discretion.

**B1.18 RELEASE AND INDEMNITY**

- (a) To the extent permitted by law, except as provided at subclause (b) below:
  - (i) the Contractor's liability to the Principal arising out of or in connection with this Contract or the subject matter of this Contract shall be the amount of the Contract Sum;

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- (ii) the Principal's liability to the Contractor arising out of or in connection with this Contract or the Subject matter of this Contract shall be the amount of the Contract Sum;
- (b) Nothing in subclause (a) excludes or limits a party's liability in respect of the following (whether by an act or omission of that party or its employees, agents or subcontractors):
  - (i) the death or personal injury of any person;
  - (ii) third party property damage;
  - (iii) breach of an Intellectual Property Right;
  - (iv) fraud or willful default;
  - (v) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of the loss sustained or liability incurred; or
  - (vi) the Contractor's liability for any breach of a Workplace Health and Safety law; and
  - (vi) liability out of which at law the Contractor cannot contract.

**END OF SECTION - GENERAL CONDITIONS OF CONTRACT  
AND ANNEXURE**