

International Standard Construction Contracts- A Brief Comparison

A brief comparison

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SCMHRD, Pune

Anurag Raychaudhury (2011E14); Arpan Shaikhar Gupta (2011E15)

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INTRODUCTION

We live in an age where it is virtually impossible for most of us to understand the inner workings of the things we work and interact with every day. Who is able to fully explain, for example, how an architect can be on a building site in Shanghai and able to hold a coherent discussion with his colleagues in Melbourne?

A generation ago, we might have taken the devices that rule our lives apart to find out what made them tick. Nowadays, as anyone who has ever tinkered with a modern car engine or an iPod will tell you, such a venture is pure folly. Instead, we have become used to relying upon things to work as they promised they would – and, when they do not, we bring them to experts to fix or put them out in the next hard rubbish collection.

In the construction industry, professionals work with a vast range of tools in bringing a project from conception to completion. Engineers, architects and other project personnel rightly expect that they should be able to rely upon these tools doing what they are supposed to do.

There is one tool in the site shed, however – perhaps, buried in a bottom drawer – which, without malfunctioning, can act in ways completely different from those, its users anticipate. This tool is the project's construction contract.

Advantages of Industry Standard Documents

The great advantage of an industry standard document is that there is a body of jurisprudence dealing with those documents and the exact wording from those documents.

For example, many of the terms in the standard residential contract have been judicially interpreted such as using the term "time is of the essence of the contract" rather than stating a plain English version such as "the buyer must complete on the date for completion". Similarly, in building contracts, phrases to do with "latent conditions" have been litigated and it is accepted to mean a "defect which could not be discovered by a person of competent skill and using ordinary care". There are many cases which hold that the physical conditions on the site due to weather conditions off the site are not latent conditions. For example, if the subsoil is wetter than expected because of heavy rain, that is not a latent condition.

The use of an industry standard document can assist the parties to reach an agreement quickly. The standard residential contract is a very good example of this – provided that there are no amendments or special conditions, many buyers are happy to sign an REIQ contract without discussing the matter with their lawyer. Within the residential conveyancing industry, there is general acceptance that this form of contract is fair to both parties.

Finally, the use of industry standard contracts prevents the parties having to "reinvent the wheel". Particularly where the parties are not large, there can be significant savings in legal costs by using the industry standard document and relying on the industry body to have

considered the implications of that standard contract. Many domestic builders rely on the Master Builders contract because the profit in each job is not sufficient to justify engaging a lawyer to draft a contract from scratch. The party with whom the builder is contracting may also be more comfortable dealing with the Master Builder's contract or another industry standard contract rather a contract developed by a specific builder.

Client Standard Contracts

Most clients who regularly enter into contracts will have developed their own standard documents or standard changes to one of the industry standard documents. Using a standard document with a schedule with the commercial terms and with variations to the standard document makes it very easy for the contact administrator to identify changes and to keep track of the commercial terms. There is a tendency for the other party to vary the standard provisions in the contract and to use the schedule for commercial terms. There is a risk in changing the standard terms that these changes will not be noted in the data base of contracts and errors will occur.

International standard forms of construction and engineering contracts

Country	Common forms of contract for large projects	Common forms for international projects	Common forms for engineering contracts
Belgium	<p>Public works - regulated by the General Contracting Conditions of 26 September 1996 (<i>Algemene aannemingsvoorwaarden</i> or <i>Cahier général des charges</i>).</p> <p>Private works - bespoke contracts usually created by modifying standard contracts provided for registered members by professional associations such as the Building Confederation and the Real Estate Confederation.</p> <p>House construction - regulated by Law of 9 July 1971, amended in 1993 (<i>Wet/Loi Breyne</i>) which imposes several contractual conditions.</p>	<p>FIDIC contracts most common.</p> <p>Rules in the Draft Common Frame of Reference (book four, part C, chapter three) occasionally used but not mandatory.</p>	<p>Public works - regulated by the General Contracting Conditions.</p> <p>Private works - bespoke contracts usually created by modifying standard contracts provided for registered members by professional associations such as the Flemish Organisation of Architects.</p>
Brazil	<p>Bespoke contracts common, especially for large projects.</p> <p>Standard form contracts, especially FIDIC contracts more popular in recent years due to the influence of international players, multilateral investment agencies and promotion by FIDIC. The Red Book and Silver Book contracts are particularly common.</p>	<p>FIDIC contracts common.</p>	<p>Same contracts apply as for construction projects.</p>
Canada	<p>Local standard forms published by the Canadian Construction Documents</p>	<p>Bespoke and FIDIC contracts</p>	<p>Local standard forms developed</p>

	<p>Committee (CCDC), Canadian Construction Association (CCA), Royal Architectural Institute of Canada (RAIC), and both local and national governments and authorities.</p>	<p>common. Local Canadian forms available but rarely used.</p>	<p>by the RAIC, Association of Consulting Engineers of Canada and other provincial and architectural associations.</p>
Czech Republic	<p>FIDIC contracts usually used for large projects, sometimes adjusted to comply with Czech law.</p> <p>The Construction Council of the Czech Society for Construction Law (SIA), Czech Chamber of Civil Engineers and Ministry of Transport for road construction issue standard form provisions and contracts.</p>	<p>FIDIC contracts common, sometimes adjusted to comply with Czech law.</p>	<p>Same contracts apply as for construction projects.</p>
France	<p>Under both property development agreements (<i>contrats de promotion immobilière</i>) (CPIs) and sale pending construction agreements (<i>vente en l'état futur d'achèvement</i>) (VEFAs), local "construction contracts" (<i>marchés de travaux</i>) are used.</p>	<p>Same local contracts apply as for national projects, providing the governing law is French.</p>	<p>Local standard contracts used but service providers only have an obligation to allocate resources (<i>obligation de moyen</i>) not an obligation to achieve a result.</p>
Germany	<p>Bespoke contracts.</p> <p>Local contracts containing standard terms and conditions (STC), whose content is governed by the Civil Code (BGB). Parts of the General Contract Provisions for the Performance of Construction Works (VOB) are usually included.</p>	<p>FIDIC contracts common.</p>	<p>FIDIC contracts common.</p> <p>Engineering contracts have more content than traditional construction contracts so the VOB are generally not agreed on, and build, operate,</p>

			transfer (BOT) models are becoming more popular.
Hong Kong	<p>Local standard contracts provided by the Hong Kong Special Administrative Region (SAR) government commonly used for government construction projects.</p> <p>Local standard contracts for private domestic projects provided by many associations, including the Joint Contracts Tribunal (JCT), Royal Institution of Surveyors (RICS), and Hong Kong Institute of Architects (HKIA).</p>	FIDIC contracts common.	Local standard government contracts common as majority of projects are government ones.
Ireland	<p>Local standard forms of contract provided by the Royal Institute of Architects of Ireland (RIAI), Engineers Ireland (IEI) and Government Construction Contracts Committee (GCCC). GCCC contracts mandatory for all public works.</p> <p>UK and international forms also common, including FIDIC contracts.</p>	Same contracts apply as for large national projects.	Same contracts apply as for construction projects, often with extra provisions for complex mechanical and electrical engineering contracts.
Japan	<p>Private works - local standard form of contract used, jointly prepared by the major industry associations for contractors and architects.</p> <p>Public works - Model PFI contract, prepared by the PFI Promotion Office of the Cabinet Office of Japan.</p>	FIDIC contracts or standard forms prepared by the Engineering Advancement Association of Japan (ENNA) usually used.	Same contracts apply as for construction projects.
Poland	FIDIC contracts common.	Substantially	Small projects -

	American Institute of Architects (AIA) forms of contract recognised on the market but not frequently used.	amended FIDIC contracts common, usually those used for EPC/turnkey projects. Bespoke contracts based on internationally recognised forms of contract also used.	Short bespoke contracts. Large projects - Bespoke contracts based on an internationally recognised form of contract. Projects funded by external funding - Amended FIDIC contracts.
Romania	FIDIC contracts common.	FIDIC contracts common.	FIDIC contracts common. Parties' standard contracts sometimes used, amended to comply with Romanian law.
Russian Federation	FIDIC contracts common, with significant modifications for mandatory local law.	FIDIC contracts common. Other various international standard form contracts sometimes used.	Same contracts apply as for construction projects.
Slovak Republic	FIDIC contracts. German Construction Contract Procedures (VOB) contracts. Local standard form contracts based on FIDIC standards also used, prepared by the Slovak Association of Consulting Engineers (SACE).	FIDIC contracts common. VOB contracts used in some situations.	Same contracts apply as for construction projects.

South Africa	<p>FIDIC contracts.</p> <p>The New Engineering Contract (NEC) Engineering and Construction Contract (NEC3).</p> <p>The Joint Building Contracts Committee (JBCC) 2000 suite of contracts.</p> <p>The General Conditions of Contract for Construction Works 2004 (GCC) produced by the South African Institute for Civil Engineering.</p>	Same contracts apply as for large national projects.	Same contracts apply as for construction projects.
Sweden	Local standard forms published by the Construction Contracts Committee (<i>Bygandets Kontraktskommitté</i>) are used, called the AB 04 or ABT 06.	FIDIC contracts common.	Same contracts apply as for construction projects.
UK (England and Wales)	<p>The Joint Contracts Tribunal (JCT) provides the Major Project Construction Contract, the Design and Build Contract, and Standard Forms of Building Contract.</p> <p>Other standard form contracts include the NEC3 and the GC/Works contracts (used in connection with government works).</p>	FIDIC contracts common.	Local standard form contracts are provided by the Institution of Civil Engineers (ICE) and the Institute of Chemical Engineers (ICChemE).
United Arab Emirates	<p>FIDIC contracts common, particularly the Red, Yellow and Silver books.</p> <p>Other English language standard form contracts, including the NEC3 engineering and construction contract, are occasionally used.</p>	FIDIC contracts common.	<p>FIDIC contracts (Silver Book) common.</p> <p>Bespoke contracts sometimes used by major oil and gas sector companies.</p>
United States	Local standard forms used, published by the American Institute of Architects (AIA), Engineers Joint Contract Documents Committee (EJCDC) and	FIDIC contracts common.	Local engineering, procurement and construction (EPC) form of contract used for a

	Associated General Contractors (AGC). Bespoke contracts commonly used for large projects.		design and build (D&B) projects. EJCDC contracts used for non-D&B projects.
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Comparison between Australian Standard Contract, JCT (Joint Contracts Tribunal)- U.K, VOB (Verdingungsordnung ftir Bauleistungen)- Germany and FIDIC (Red Book)- U.S.A

Australia: 2.1. Provision of Supplies:

The Supplier must provide the Supplies to the Commonwealth at the delivery location on the delivery date and in accordance with any instructions for the delivery of the Supplies specified in the Statement of Requirement. The Supplier must promptly notify the Commonwealth if the Supplier becomes aware that it will be unable to provide all or part of the Supplies by the relevant delivery date and advise the Commonwealth as to when it will be able to do so.

To the extent the Supplies are services, they must be provided to the standard that would be expected of an experienced and professional supplier of similar services and any other standard specified in the Statement of Requirement.

To the extent the Supplies are goods, they must be delivered free from all Encumbrances and must meet any standard specified in the Statement of Requirement.

JCT: 6. Contract Term

6.1 The Contract shall commence on the Commencement Date and shall continue in force (subject as hereinafter provided and to earlier termination in whole or in part in accordance with these General Conditions of Contract) for a period up to [Month, date, year] with an option to extend in accordance with Clause 7.

FIDIC: 17.2 Contractors' Care of Work

- Contractor to take full care of works and goods from commencement date till taking over certificate which than pass on to the Employer
- Care still continues for any outstanding Work, until completed
- Loss or damage attributable to the contractor shall be rectified, even if the damage is caused after taking over certificate.

Australia: 2.2. Acceptance:

The Commonwealth may accept or reject the relevant Supplies within 14 days after delivery of the Supplies to the delivery location. If the Commonwealth does not notify the Supplier of acceptance or rejection within the 14 day period, the Commonwealth will be taken to have accepted the Supplies on the expiry of the 14 day period. The Commonwealth may reject the Supplies where the Supplies do not comply with the requirements of the Contract, including any acceptance tests specified in the Special Conditions. If the Commonwealth rejects the Supplies the Commonwealth may:

- (a) require the Supplier to repair or modify the Supplies, within a period determined by the Commonwealth, at the Supplier's cost, so that the Supplies comply with the requirements of the Contract; or
- (b) require the Supplier to provide, at the Supplier's cost, replacement Supplies which comply with the requirements of the Contract, within a period determined by the Commonwealth; or
- (c) terminate the Contract in accordance with the Termination clause of these Commonwealth General Conditions of Contract.

In any case, and at the Commonwealth's request, the Supplier must, at its own cost, promptly remove any rejected Supplies from the Commonwealth's premises. Replacement, repaired or modified Supplies are subject to acceptance under this clause 2.2. The

Supplier will refund all payments related to the rejected Supplies unless replacement or repaired Supplies are accepted by the Commonwealth.

FIDIC: Contract Agreement

Within 28 days of receipt of LoA ; Cost borne by the employer

Australia: 2.3. Title and Risk:

Title to the Supplies transfers to the Commonwealth upon their acceptance by the Commonwealth in accordance with the Acceptance clause of these Commonwealth General Conditions of Contract. The risk of any loss or damage to the Supplies remains with the Supplier until their delivery to the Commonwealth at the delivery location.

JCT: 5. Rights Cumulative

5.1

All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it.

FIDIC: 17.2 Limitation of Liability

- Neither part liable to the other for loss of use of work, profit, any other contract, and consequential loss other than under
- Total liability not to exceed the amount as stated in the COPA or otherwise the ACA
- Excluded liabilities from the total liabilities; Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights]

Australia: 2.4. Invoice:

The Supplier must submit a correctly rendered invoice to the Commonwealth. An invoice is correctly rendered if, and only if:

- (a) it is correctly addressed and calculated in accordance with the Contract ;
- (b) it relates only to Supplies that have been accepted by the Commonwealth in accordance with the Acceptance clause of these Commonwealth General Conditions of Contract;
- (b) it is for an amount which, together with all previously correctly rendered invoices, does not exceed the Contract Price;
- (c) it includes any purchase order number, and the name and phone number of the Contract Manager; and
- (d) it is a valid tax invoice in accordance with the GST Act.

Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Supplier, an admission of liability or evidence the obligations under the Contract have been completed satisfactorily, but is payment on account only.

The Supplier must promptly provide to the Commonwealth such supporting documentation and other evidence reasonably required by the Commonwealth to substantiate performance of the Contract by the Supplier.

Australia: 2.5. Payment:

The Commonwealth must pay the invoiced amount to the Supplier within

30 days after receiving a correctly rendered invoice. If the Commonwealth fails to pay on a correctly rendered invoice within 30 days of receipt and the Supplier is a Small Business, the Supplier may submit a separate invoice

for payment of simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due, up to and including the day that payment is made, provided the interest payable exceeds A\$10.

JCT: 18. Payment of Invoices

18.1 Subject to any contractual or equitable right of set-off the Council will pay the Contractor following receipt of an invoice which is accurate and contains full details of the work carried out.

18.2 Invoices for work undertaken under the Contract shall be rendered at the time and in the manner specified in the Contract.

18.3 If, for the purpose of providing the Services, the Contractor enters into a contract for the supply of goods or services with a third party, the Contractor shall include in that contract

a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the third party.

18.4 If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the Authorised Officer. In the event that the problem is not resolved to his satisfaction, he should write to the relevant Strategic Director of the Council setting out his case. The Strategic Director shall ensure that the complaint is dealt with and that the Contractor is not treated adversely in future for having made a complaint.

18.5 For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the invoice was received by the Council. The relevant date shall apply unless the invoice was presented before the Contractor performed his obligations under the Contract and, in these circumstances, the relevant date shall be deemed to be the last day of a period of 30 days commencing on the day when the Contractor performed his obligations under the Contract.

18.6 The Council will make payments within thirty days of receipt of invoices which are not disputed. Notification of a disputed invoice will be advised in writing by the Council to the Contractor as soon as is reasonably practicable after receipt of the invoice by the Council. Payment will only be withheld in respect of the disputed amount.

18.7 The Council will accept liability to pay only for the work undertaken in accordance with the Contract.

18.8 The Council will make payments due under the Contract to the Contractor through the Bank Automated Clearing System (BACS).

VOB: 24. Settlement / invoicing / final invoice / payment

A single copy of the invoice shall be sent to the invoice address stated in the purchase order, a duplicate copy to the Purchaser. Prepayments / progress payments made shall be shown individually in the invoice. The tax number shall also be stated.

Since the Client is the construction company in terms of the German VAT Act at the time of conclusion of the Contract, invoicing by the Contractor shall be made net and without indication of the value-added tax with reference to the Client's tax liability according to section 13b (1) no. 4 and 13b (2) s. 2 UStG [VAT Act]. If a deviating assessment of the facts or of the personal prerequisites of the Client is made subsequently, the Client and the Contractor shall be ready to settle accounts accordingly and to remunerate the value-added tax, if required.

If, at the time of settlement of accounts, a Contractor of building services does not hold a valid certificate of exemption for tax under section 48 b, subsection 1, sentence 1 of the German Income Tax Act, a tax deduction of 15 % of the consideration within the meaning of section 48 of the German Income Tax Act is made and paid over to the tax office responsible for the Contractor in accordance with the Act to Control Illegal Employment in the Construction Sector

In order to compensate for the resulting additional accounting expenditure, the Client is entitled to deduct lump-sum emoluments of € 100.00 from the Contractor's invoice. This is without prejudice to any other claims arising from other legal grounds.

Where contract payments are based on unit prices, the invoice shall include documents giving a verifiable survey of quantities and full details on the item number in the specifications, exact dimensional lines and values (lengths and areas with two decimal points, volumes and weights with three decimal points), exact identification of locations, and construction measures (e.g. building, elevation above datum, chainage).

The deadline for submission of the Contractor's final invoice to the Client shall be based on section 14 no. 3 VOB/B. The final invoice shall be payable 30 calendar days after the Client's receipt of the verifiable final invoice and formal acceptance by the Client or Purchaser.

Any discounts agreed shall be deductible from progress payments as well as from the final payment.

Unless otherwise agreed, a price discount offered in percent shall be deducted from the unit and lump sum fixed prices when settling accounts; such price discounts shall also be applicable to additional remuneration claims from changes in work according to clause 13.

In case of working consortiums, payments shall be made with discharging effect for the Client to the consortium's representative authorised to execute the contract or upon the latter's written instruction. This shall also apply after dissolution of the consortium.

Australia: 2.6. Price Basis:

The Contract Price is the maximum price payable for the Supplies and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

The Commonwealth is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges.

JCT: 17. Contract Price Rates

17.1

The Contract Price Rates shall be subject to annual review on each anniversary of the Commencement Date but a framework agreement does not regulate price increases other than by the decision to place individual purchase orders against rates agreed within the contract and escalated by mutual agreement. Any price increases must be pre-notified with reasons justifying and accepted before the placement of orders.

VOB: 21. Remuneration

As far as remuneration is concerned, the provisions stipulated in the contract and its appendices shall apply. Otherwise, the following shall apply depending on the type of remuneration agreed upon:

- Lump sum fixed price

If a lump sum fixed price has been agreed with the Contractor, this price shall be deemed to cover all the necessary costs to ensure full, functional, ready-to-operate, proper, ready-to-occupy and timely execution and delivery of the work specified in the contract, even if and to the extent that individual or ancillary work required should not explicitly result from the specifications and its appendices and/or other contract basics, but clearly have to be performed to achieve the performance contractually agreed upon at the time the contract was awarded. The Contractor shall bear the risk of quantity and mass variations.

Remuneration above and beyond an agreed lump sum fixed price, however, shall only be excluded to the extent that there are no changes in work pursuant to clause 13.

- Unit price

If payment on a unit price basis has been agreed with the Contractor, the Contractor may only request remuneration for the work it has actually performed. The amount of construction work actually performed shall be determined by measurement. Quantities shall only become binding and final after measurement;

if the specifications already contain quantities for work items, these quantities shall only be regarded as non-binding estimates which do not constitute a claim for remuneration.

The agreed unit prices shall be fixed prices; there shall be no escalation for wages and materials.

Otherwise, section 2, no. 3 VOB/B shall apply. The Contractor shall advise the Client without delay of any situation pursuant to section 2, no. 3 VOB/B where the Contractor recognises a downward or upward deviation from the stated volumes of more than 10 % leading to an increase or decrease in costs which,

in exceptional cases, may result in a higher or lower unit price. If the Contractor fails to advise the Client accordingly, it shall be liable to compensate the Client for any resulting losses unless it may prove that failure to do so was not its fault.

- Daily or hourly wage work

Daily or hourly wage work shall only be paid separately if this work, including charge rates, has been contractually agreed and execution of this work has been expressly ordered beforehand by the Client,

Purchaser or site manager. The site manager and the Purchaser, however, shall not be entitled to commission daily or hourly wage work above and beyond that. Corresponding

arrangements shall _____ exclusively be made with the Client itself. If such hourly work is agreed, the charge rates agreed shall be applicable irrespective of the number of hours worked.

22. No remuneration for work performed on behalf of third parties

Otherwise, the Contractor shall not be able to claim remuneration from the Client for any work it has performed on behalf of third parties.

23. Exemption from third-party claims

The Contractor shall exempt the Client from any claims by third parties which are due to a culpable breach of its contractual duties.

FIDIC: 14.1 The Contract Price

Unless stated in the COPA

(a) Contract Price be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments as per the Contract;

(b) the Contractor shall pay all taxes, duties and fees required to be paid as per contract and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];

(c) the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:

(i) of the Works which the Contractor is required to execute, or

(ii) for the purposes of Clause 12 [Measurement and Evaluation];

(d) Contractor to, within 28 days after the Commencement Date, submit a proposed breakdown of each lump sum price in the Schedules. Engineer to consider but not bound by it.

Australia: 2.7.Offset:

If the Supplier owes any amount to the Commonwealth in connection with the Contract, the Commonwealth may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

FIDIC: 14.2 Payment

- First installment shall be made within 42 days of LoA, 21 days of documents received as per Sub-Clause 4.2[Performance Security] and Sub-Clause 14.2[Advance Payment], whichever is later
- Interim payment within 56 days of receipt of docs by the Engineer
- Final payment within 56 days after Employer receives this Payment Certificate
- Payment made in the bank account nominated by the Contractor

Australia: 2.8. Quality Assurance:

Upon request by the Commonwealth, the Supplier must provide the Commonwealth and its nominees with access to the Supplier's premises to undertake quality audits and quality surveillance as defined in the relevant

Australian Quality Standards of the Supplier's quality system and/or the production processes related to the Supplies.

JCT: 12. Performance Standards and Remedies

12.1

From the Commencement Date, the Contractor shall provide the Services in accordance with the Performance Standards in the specification to form part of the Contract.

12.2

If at any time the Contractor fails to provide the Services in accordance with the Performance Standards, the Council shall have the right to:

12.2.1

make such adjustment(s) to contract payments that would otherwise be due to the Contractor under Clause 18 (Payment of Invoices) as it shall in its absolute discretion think fit, any such adjustment being calculated by the Council by reference to tendered rates.

12.2.2

require the Contractor to put in place such additional resources as are necessary to perform the Services in accordance with the Performance Standards as early as practicable thereafter at no additional charge to the Council; and

12.2.3

require the Contractor to promptly remedy any failure to meet the Performance Standards or to re-perform any non-conforming Service at no additional charge to the Council.

12.3

Without prejudice to any other right or remedy, the Council shall have the right to recover liquidated damages under the Contract and/or to terminate the Contract on any material breach by the Contractor of this Clause 12.

FIDIC: 4.1 Quality Assurance

- Institute a QA system, engineer to audit any aspect of the system
- Details of the procedures and compliance docs be given to the Engineer
- Compliance of QA system shall not relieve contractor of any duties etc under the contract

Australia:2.9. Insurance:

The Supplier must procure and maintain such insurances and on such terms and conditions as a prudent supplier, providing supplies similar to the Supplies, would procure and maintain and if requested, must provide the Commonwealth with evidence of currency of those insurances.

JCT: 16. Insurance

16.1

Without prejudice to its liability to indemnify the Council under Clause 15 (Indemnity to Council) the Contractor shall effect and maintain such insurances as are necessary to cover its liability under Clause 15 (Indemnity to Council).

16.2

The insurance in respect of risks of liability to third parties arising out of the action or default of the Contractor, its agents, servants or others acting under its control shall be to a minimum value of £5,000,000 (five million pounds) or such increased sum as the Council shall from time to time stipulate in respect of one claim and the number of incidents shall be unlimited. The Contractor's insurance in respect of claims for personal injury or the death of any person under a contract of service with the Contractor and arising out of hand and in the course of each person's employment shall comply with the Employers Liability (Compulsory Insurance) Act 1969.

16.3

Without prejudice to the provisions of Clause 16.1, the Contractor shall reimburse the Council all payments or additional payments made by the Council to third parties which have become necessary as a direct consequence of delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by the Council, provided always that the Council shall take all reasonable steps to minimise the need to make such payments and shall not claim for any payments arising as a result of the Council's neglect to take such reasonable steps.

16.4

In addition to any other liability which the Contractor shall incur, and without prejudice to the foregoing provisions, the Contractor shall be liable to the Council for any loss, damage, injury or expense (whether direct, consequential or otherwise) arising out of or in connection with the performance of the Contract, including the operation of any computer software contained in or contributing to the performance of the Contract, where such loss, damage, injury or expense arises from the breach of contract or the breach of duty or fault or negligence of the Contractor, his employees or his agents.

16.5

Nothing in these General Conditions of Contract nor in any other part of the Contract shall impose any liability on any member of the staff of the Council or its representatives in their personal capacity.

16.6

The Council shall indemnify the Contractor against legal liability for all actions, claims, demands, costs, charges and expenses arising from or incurred by reason or any infringement or alleged infringement of copyright, patent, registered design or other property right used at the request of the Council by the Contractor in the course of undertaking the Contract

16.7

The Contractor shall prior to the commencement of the Services produce to the Authorised Officer without charge documentary evidence that the insurances required are properly maintained.

16.8

The Council shall be entitled, without prejudice to its existing rights and remedies, upon the failure of the Contractor to maintain the insurance referred to in this Clause 16, to terminate this Contract.

16.9

The Contractor shall without charge, provide to the Council on request evidence that the premiums payable in respect of the insurances required under this Clause 16 have been paid and that the said insurances are in full force and effect.

VOB: 35. Liability insurance

The Contractor shall be obliged to take out an adequate liability insurance at its own cost prior to the commencement of work. This insurance shall also cover the risk of deficient performance of planning and/or construction surveillance work to the extent that the Contractor has been commissioned to perform such work. The Contractor shall maintain the insurance cover of its liability insurance from the commencement of the work to be performed until the end of the warranty period.

The amount of cover shall be maximised during the time of insurance cover to the double amount for all occurrences per insurance year, i.e. insurance cover must be available at least for two occurrences per insurance year in the full amount in each case. The amounts of cover per occurrence under the liability insurance to be taken out by the Contractor shall amount to at least

- € 5 million for injury to persons, and
- € 5 million for damage to property and assets.

The specific amount of insurance cover shall not constitute a limitation of liability.

The Contractor shall prove to the Client the existence of a liability insurance by handing over a suitable certificate of insurance (which also includes the confirmation of insurance cover regarding planning and construction surveillance work) if so requested by the Client. The Contractor shall be obliged to prove the maintenance of the liability insurance whenever requested to do so by the Client. If the Contractor does not prove the existence of a liability insurance at the time specified in para. 1, nor within a reasonable period of time set by the Client, it shall not be entitled to commence or continue with the performance of the work. The Contractor shall be responsible for any delays in construction which may result.

FIDIC: 18.1 General Requirements for Insurance

- Insurers and terms approved by the Employer, terms agreed upon before the LoA and shall take precedence over these provisions
- If jointly insured then the cover to be as if separately issued policy
- If policy indemnifies additional joint insured then;
 - Contractor shall act on behalf of all except Employers' personnel
 - No direct dealings or payments to the additional insured
 - All additional insured to comply with the policy conditions
- Evidences of the insurance and premium paid to be submitted to the other parties and the Engineer
- No changes w/o the approval of the other party
- Either party can effect insurance if the first party does not do so. The premium be paid to the first party and the amount be adjusted in the Contract Price

18.2 Insurance for Works and Contractors' Equipment

- Insure not less than the cost of full reinstatement including demolition, professional fee and profit. Effective on as stated till taking over certificate
- For loss or damage - till performance certificate and arising from cause prior to taking over certificate
- Equipment for not less than the full replacement value, including delivery, effective from it being transported till its requirement ceases
- This insurance, unless stated in COPA
 - Effected by the contractor
 - In joint names of the parties, entitled to receive payment as allocated
 - Cover all loss and damage from cause not listed in Sub-Clause 17.3 [Employers' Risk]
 - Loss or damage of a part attributable to use by employer of another part and loss by sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this shall not apply)
 - Shall exclude
 - defective design, workmanship and material (shall include any other part damaged as a direct result

- Part of work lost to reinstate if this reinstated work is due to defective design, material or workmanship
- Part taken over by the employer and contractor not liable to its loss or damage
- Goods while not in country
- If after a year from the Base date the insurances ceases to be available at commercially reasonable terms contractor to notify Employer and the Employer is entitled to payment equivalent to the premium for such cover and unless the Employer obtains such cover at commercially reasonable terms, be deemed to have approved its omission.

18.3 Insurance Against Injury to Persons and Damage to Property

- Insuring party shall insure against liability for loss, damage, death or bodily injury to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]) arising out of contractors performance
- Limit per occurrence as stated and no limit for number of occurrence as stated in COPA, if no such limit is mentioned this clause shall not apply
- This insurance, unless stated;
 - By the contractor as insuring part
 - Joint names of parties
 - Cover liability to all employers' property arising out of the contractors' performance
 - Shall exclude liability arising from
 - Employers right to execute works on , above, over or through land and to occupy this land
 - Damage as an unavoidable result of the Contractors' obligation to execute work and remedy any defect
 - a cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractors' Personnel

- Contractor to effect and maintain from injury, sickness, disease or death of any person employed by the contractor
- Employer and the Engineer shall also be indemnified form this policy for reasons other than those attributable to the Employer
- For subcontractor - by the subcontractor - but the responsibility for compliance to this clause is of the Contractor.

Australia: 2.10. Indemnity:

The Supplier indemnifies the Commonwealth, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and

expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

(a) a default or any unlawful, wilful or negligent act or omission on the part of the Supplier, its officers, employees, agents or subcontractors; or

(b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property Rights or Moral Rights; in connection with the Supplies.

The Supplier's liability to indemnify the Commonwealth under paragraph (a) is reduced to the extent that any wilful default or, unlawful, or negligent act or omission of the Commonwealth, its officers, employees or contractors contributed to the liability, loss, damage, cost, compensation or expense.

The Commonwealth holds the benefit of this indemnity on trust for its officers, employees and contractors.

JCT: 15. Indemnity to Council

15.1

The Contractor shall not be liable for any loss, damage or delay suffered by the Council to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of the Council.

15.2

Subject to Clause 15.1, the Contractor shall indemnify the Council and any of its staff or agents against:

15.2.1

any loss or damage caused either to any property of the Council or its staff or agents or any injury (including injury resulting in death) sustained by the staff or agents of the Council by reason of any negligent act or omission of the Contractor, his employees or agents during the performance of the Contract;

15.2.2

any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss of, or damage to, any property of the Contractor's personnel or injury (including injury resulting in death) sustained by the Contractor unless and insofar as such loss, damage or injury is caused by the negligent act or omission of the Council or any of its staff or agents;

15.2.3

any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss, damage or injury (including injury resulting in death) sustained by any third party during the currency of the Contract in consequence of any negligent act or omission of the Contractor, his employees or agents.

15.3

The Council shall have the right to deduct the amount of such liability, loss, costs, charges, claims, expenses (including professional expenses) or damages from any monies due to the Contractor or to recover same by action.

FIDIC: 17.1 Indemnities

- Contractor to indemnify and hold harmless employer against all claims, damages, legal fee, losses, damage to or loss of any property, real or personal (other than the Works), as a result of sickness, disease or death, due to Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, attributable to the contractors' personnel.
- Employer to indemnifies and hold contractor harmless against losses etc. attributable to the employer and the matters to which liability may be executed from insurance cover.

Australia: 2.11. Approvals and Compliance:

The Supplier must obtain and maintain any licences or other approvals required for the lawful provision of the Supplies and arrange any necessary customs entry for the Supplies. The Supplier must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth laws and policies relevant to the Supplies.\

FIDIC: 1.3 Communications

For the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

(a) in writing, delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission

(b) To the address as mentioned in the contract.

However,

(i) Change of address notice be incorporated

(ii) For approval or consent, if address specified then same be followed otherwise return address

Communications to be addressed to all parties concerned

Australia: 2.12. Conflict of Interest:

The Supplier warrants that no conflicts of interest exists, or is anticipated, relevant to the performance of its obligations under the Contract. If a conflict of that kind arises, the Supplier must notify the Commonwealth immediately. The Commonwealth may decide in its absolute discretion, without limiting its other rights under the Contract, that the Supplier may continue to provide the Supplies under the Contract.

JCT: 37. Conflict of Interest

37.1

The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Council in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Council may reasonably require.

37.2

Where the Council is of the opinion that the conflict of interest notified to it under Clause 37.1 above is capable of being avoided or removed, the Council may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

37.2.1

if the Contractor fails to comply with the Council's requirements in this respect; or

37.2.2

if, in the opinion of the Council, compliance does not avoid or remove the conflict, the Council may determine the Contract and recover from the Contractor the amount of any loss resulting from such determination.

37.3

Where the Council is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Council may determine the Contract immediately for breach of a

fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such determination.

Australia: 2.13. Warranties:

The Supplier must procure that the Commonwealth receives all relevant third party warranties in respect of Supplies.

If the Supplier is a manufacturer, the Supplier must provide the Commonwealth with all standard manufacturers' warranties in respect of the Supplies it has manufactured.

JCT: 30. Warranties

30.1

The Contractor warrants, represents, and undertakes to the Council that:

30.1.1

it has full authority to enter into the Contract;

30.1.2

it is of sound financial standing and has sufficient working capital available to it to carry out the Services in accordance with the Contract for the entire duration of the Term

30.1.3

it will make available to the Council copies of its audited accounts throughout the currency of the Contract within 30 days of the formal adoption of such accounts by the Contractor.

FIDIC: 11.1 Completion of Outstanding Work and Remedying Defects

- Contractor to complete all outstanding work on the date stated in the Taking Over certificate, within reasonable time stated by the Engineer
- Execute all work required to remedy defects or damage as notified by the Employer on or before expiry of Defects Notification period

11.2 Cost of Remedying Defects

- Contractor to pay for defects remedy if the defect is attributable to;
 - Any design for which contractor is responsible
 - Not in accordance with the contract
 - Failure to comply with any other obligation
- If otherwise then the contractor to be notified and Sub-Clause 13.3[Variation procedure] shall apply.

11.3 Extension of Defects Notification Period

- Period can be extended if the works or part, after taking over, cannot be used by reason of defects or damage to a maximum of 2 years
- If delivery of Plant and Material suspended under Sub-Clause 8.1 and Sub-Clause 16.1, then contractors obligation shall not hold good for any defects or damages beyond two years after the Defects Notification Period would otherwise had expired.

11.4 Failure to Remedy Defects

- Contractor to be given notice and reasonable time to remedy works
- If the still not does so and the cost was to be borne by the contractor then the Employer can;
 - Carry out works on his own and charge the contractor for the same w/o passing the responsibility of such works to the contractor
 - Ask the engineer to reduce the contract price reasonably
 - If the defect is severe so as to hinder in the intended use of the works, terminate the contract as a whole and be entitled to recover all sums paid for the Works or part plus financing cost and clearing of site and handing over the plant and material to the contractor.

11.5 Removal of Defective Work

- Contractor with the consent of the Employer can remove the defective work or part for expediting the repair
- He shall for doing so increase the Performance Security by full replacement cost of such items, or arrange other security.

11.6 Further Tests

- Repetition of tests after remedying can be asked for by the Engineer giving a 28 days notice
- Cost and risk of such test to be borne by one liable for the cost of remedying the defect.

11.7 Right of Access

- Contractor shall have right of access as is reasonably required if Performance certificate not issued unless reasonable security restrictions by the employer apply.

11.8 Contractor to Search

- Search for the cause of the defect if required by the Engineer
- Cost plus reasonable profit to be determined by the Engineer and added to the contract price unless the cause of defect is attributable to the Contractor.

11.9 Performance Certificate

- Performance not completed until such a certificate issued by the Engineer
- Engineer shall issue such a certificate within 28days after the latest of the expiry of the Defects Notification period or when the contractor has supplied Contractors' Documents and carried out all the tests
- Copy to the Employer
- Only such a certificate constitutes acceptance of Works.

11.10 Unfulfilled Obligations

- Unfulfilled obligations to be completed by both parties even after the Performance certificate and for such determinations the contract is still in force.

11.11 Clearance of Site

- Site to be cleared within 28 days of Performance Certificate otherwise the employer can sell or dispose materials and charge cost incurred for the same
- Balance of the sale shall be given to the contractor after deducting Employers costs.

Australia: 2.14. Access to Supplier's Premises:

The Supplier agrees to give the Commonwealth, or its nominee, all assistance reasonably requested for any purpose associated with this Contract or any review of the Supplier's performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Supplies and the Contract.

JCT: 22. Use of Council Premises

22.1

In cases where the Contractor's staff are providing the Services on Council premises and subject to the requirements of the Specification and other documents which are relevant to the Contract, the Council during the period of the Contract shall permit the Contractor to use free-of-charge in connection with the provision of the Services the staff washrooms and lavatory facilities where available.

22.2

The Contractor shall use the above facilities only in connection with the provision of the Services and shall ensure that the Contractor's staff use the facilities only for that purpose.

22.3

The permission given in Clause 22.1 to use the facilities is personal to the Contractor and the Contractor's staff and shall cease immediately this Contract terminates.

22.4

Only the Contractor's own staff and persons making deliveries to the Contractor in connection with the provision of the Services may enter or use any part of any Council property without the prior written permission of the Authorised Officer.

22.5

For the avoidance of doubt, it is hereby declared that the permission to enter and use any Council property hereby given is not the grant of a tenancy of any part of such property.

22.6

The Contractor's staff shall use only the pay telephones where available.

22.7

Copies of policies and procedures of the Council, which the Council considers are necessary for the provision of the Services, will be provided to the Contractor. The Council will use its best endeavours to ensure that changes made to such policies and procedures from time to time are notified to the Contractor.

22.8

The Contractor shall comply with all reasonable requests of the Authorised Officer with regard to the security of any Council property.

22.9

The Council will not accept any liability for any equipment or materials left or stored by or on behalf of the Contractor at any Council property.

VOB: 9. Site installation and clearance/site and traffic security

The Contractor shall be responsible for the proper maintenance of storage and working areas as well as access routes as provided by the Client and/or Purchaser or restoring them to the condition in which they were provided to the Contractor. Otherwise, the Contractor shall be obliged to transport, install, provide and remove the site facilities for the entire construction period.

The Contractor shall be responsible for the control and custody of all site accommodation, work equipment, work clothes, etc. used by the Contractor or its subcontractors, even if these items are located on the Client's and/or Purchaser's terrain.

The Contractor shall execute all measures necessary to secure the construction area (i.e. the construction property as well as adjacent and/or public and private sections/areas used during construction, e.g. access routes, footways, storage areas). In addition, the Contractor shall arrange, at its own cost, for all necessary measures to implement, secure and maintain site traffic including any guards, fences, signs and lights for road and private traffic.

Moreover, the Contractor shall be liable for any damage or soiling to adjacent facilities, buildings, and traffic areas which are due to the construction work to the extent the Contractor can be held responsible for them. Access routes and traffic areas shall be protected from being damaged by heavy vehicle traffic; any damage which may be caused shall be repaired immediately at the cost of the Contractor as required.

FIDIC: 2.1 Right of Access of Site

- Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data.
- May not be exclusive to the Contractor.
- Employer shall do so in the time and manner stated in the Specification.
- Possession until the Performance Security has been received.

- If no time stated then so as to enable start of work as per the schedule submitted Sub-Clause 8.3 [Programme].

Delay on part of employer – contractor entitled to claims EOT and cost plus reasonable profit.

Australia: 2.15. Criminal Code Acknowledgement:

The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995*. The Supplier must ensure that any subcontractor approved under the Contract acknowledges the information contained in this clause.

Australia: 2.16. Waiver:

If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

JCT: Waiver

32.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all or any terms and conditions of the Contract.

Australia: 2.17. Variation:

No agreement or understanding varying or extending the Contract, including in particular the scope of the Supplies, is legally binding upon either party unless in writing and signed by both parties.

JCT: 23. Variation of Contract

23.1

The Authorised Officer shall be entitled to issue to the Contractor instructions in writing requiring the Contractor to do all or any of the following:

23.1.1

To omit any part of the Services or to cease to provide any part of the Services in such locations during such times or for such periods as the Authorised Officer may determine;

23.1.2

To provide the Services or any part thereof in such a manner as the Authorised Officer may reasonably require providing that a requirement to provide the Services to the contract specification shall not be a variation;

23.1.3

To provide such services additional to the Services including at additional or substituted locations as the Authorised Officer may reasonably require, provided that any such additional services shall be the same as or similar to the Services;

23.1.4

To vary permanently the Services or any part thereof to be provided at any location.

23.2

Where any part of the Services is omitted or ceases to be provided under the Contract, the rates and prices contained in the Schedule of Prices and Rates shall determine the valuation of the part of the Services omitted.

23.3

Without prejudice to any other of the General Conditions of Contract hereof no omission from, addition to or variation of the Contract shall be valid unless it is agreed in writing signed by the Authorised Officer.

VOB: 13. Changes in work

Any changes in work and/or additional works performed (hereinafter jointly referred to as "changes in work") shall be subject to the pertinent provisions of VOB/B unless otherwise specified herein. The Client and the Purchaser shall basically be entitled to request changes in work specified in the contract, e.g. by changing the construction plan or increasing/decreasing the scope of work, also if and to the extent that this is requested by the Purchaser. The Contractor must comply with such a request as far as this is not unreasonable in exceptional cases.

The Contractor shall record and document in the relevant work-as-executed and/or inspection documents any variations in the work to be performed under this contract which result from changes in work.

17. Time effects of changes in work

If a change in work pursuant to clause 13 causes time delays, the Contractor shall notify the Client in writing within 8 working days after receipt of the change in work pursuant to clause 13 together with the supplementary offer pursuant to clause 15, indicating the probable time of delay. If this written notice is not given in due time, the Contractor may not claim that the change in work causes a time delay. If written _____ notice is given in due time, the contractually agreed dates are extended provided proof can be furnished that this is due to the time effects of the supplementary order, the maximum extension being the period specified in the Contractor's written note. The Contractor shall nevertheless endeavour to take all measures necessary to still meet the originally agreed deadline.

15. Remuneration requirements

If a change in work according to clause 13 alters the price basis for contractually agreed work and results in additional work, the Contractor shall specify the rise or fall in costs ("supplementary offer").

The Contractor shall submit to the Client supplementary offers for the work in question within 8 working days after receipt of the oral and/or written requests by the Client and/or Purchaser pursuant to clause 13 and/or after knowing or having to know the necessity of a change in work. The supplementary offers shall contain the following minimum information and documents:

- delivery / work item,
- delivery / work price (unit prices, total price),
- indication of time effects regarding contractually agreed deadlines and/or the current execution timetable - differentiated view of commissioning and non-commissioning of the supplementary work,
- calculation record including individual documents (e.g. material, subcontractor work).

The Client shall hand over the supplementary texts using data type DA 86 as Excel or Word files free or charge.

The Client shall be entitled to reject supplementary offers that do not include the required minimum information and documents, and demand that a supplementary offer be submitted that corresponds to the aforementioned minimum requirements.

Any change in work shall be agreed in writing prior to execution. Remuneration for any such change in work shall only be paid if the Contractor, prior to execution, informed the Client of the fact that the work in question is subject to remuneration and the Client then commissioned the work.

FIDIC: 13.1 Right to Vary

- Engineer has the right to initiate at any time before giving Taking Over certificate a Variation either by Instruction or request for submission of a proposal
- Contractor to execute all such variations unless proved that the varied work requires goods not readily obtainable by the Contractor
- Each Variation may include
 - (a) changes to the quantities(may not be a Variation)
 - (b) changes to the quality and other characteristics
 - (c) changes to the levels, positions and/or dimensions
 - (d) omission unless it is to be carried out by others,
 - (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other

testing and exploratory work, or

(f) changes to the sequence or timing of the execution of the Works.

13.2 Value Engineering

- Contractor may submit to the Engineer in written a proposal which if adopted
 - Accelerates completion
 - Reduce cost to the employer of executing, maintaining or operating the Works
 - Improve the efficiency of the Completed Works
 - Otherwise be of benefit to the Employer
- Proposal prepared at the cost of the Contractor
- If proposal suggests changes in design then;
 - The contractor to design
 - Comply to contractors general Obligation Sub-Clause 4.1
- Amount or fee to be paid to the Contractor is 50% of the difference of
 - Reduction in contract Value from the change only
 - Reduction in value to the Employer due to quality, life or operational efficiencies.

13.3 Variation Procedure

- Engineer requests for proposal, prior to instructing a Variation
- Contractor to reply as soon as practicable – if not complying with reasons – otherwise with;
 - A description of the work and a program
 - Any necessary modification to the earlier program given
 - Proposal for evaluation of the Variation
- Engineer shall soon respond either which way. Contractor not to delay any work waiting for the response
- Instruction for Variation and recording of cost to be issued and be acknowledged.

13.4 Payment in Applicable Currencies

- If actual payment is in more than one currencies than the same shall be specified for the variation amount
- Proportions of the payment of Contract Price to be referred.

13.5 Provisional Sums

- Used on Engineers instructions and only for Works assigned to such sums
- For each provisional sum engineer can instruct
 - Variation Works by the subcontractor
 - Purchased by the Contractor from the Nominated Subcontractor for which there shall be included in the Actual Contract Price;
 - Actual amount paid by the Contractor
 - Overhead charges and profits as a percentage given in the schedules
- Contractor to produce invoices, quotations, vouchers and accounts or receipts to substantiate.

13.6 Daywork

- Minor or incidental work, Engineer instructs the Variation be done on daywork basis, rates for which are given in the schedule
- If daywork rates not given, this clause does not apply
- Quotations to be submitted to the Engineer before ordering the goods
- For payments all records of purchase to be furnished
- Each day accurate statements in duplicate to be given to the Engineer of previous days work which would include
 - Names, occupation and time of personnel
 - Identification, time and type of Equipment and temporary Works
 - Qtys and types of Plant and Materials used
- One copy be signed by the Engineer and returned to the Contractor who shall then submit priced statements, prior to their inclusion in the Interim Payment statement.

13.7 Adjustment for Changes in Legislation

- Changes in Law, New laws, repeal or modification of Law or the judicial or official governmental interpretation of laws may increase or decrease the Cost
- Such changes after the base dates are entitled for claims either way for EOT and cost so incurred

13.8 Adjustment for Changes in Cost

- Table of Adjustments as given in the Appendix, if no such table given this clause does not hold good
- Amounts payable be adjusted for rise and fall in cost of labour, goods and other inputs to the works, as determined by the formulae
- Full compensation cannot be payed thus it is deemed that contingencies be included in the Accepted Contract Amount
- The formula shall be of the general type

$$P_n = a + b L_n + c E_n + d M_n + \dots$$

$$L_n \quad E_n \quad M_n$$

where:

“P_n” is the adjustment multiplier to the estimated contract value of the work carried out in period “n”, this period being a month

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“L_n”, “E_n”, “M_n”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to

the last day of the period (to which the particular Payment Certificate relates); and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

- If currency of index is not relevant then the index be converted on the selling price to the payment currency
- Of cost index is not available at the time Engineer to use a provisional index and subsequent adjustments made as and when the indexes are available
- In case of failure of completion on time by the Contractor adjustment made on (i) index as on 49 days prior to the completion date (ii) current indexes; whichever is favorable to the Employer
- Weightings of each factor of cost to be adjusted if found unreasonable by the inclusion of Variations.

Australia: 2.18. Security and Safety:

When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Commonwealth or of which the Supplier is, or should reasonably be, aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that any material and property (including security-related devices and clearances) provided by the Commonwealth for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Commonwealth.

JCT: 43. Health and Safety

43.1

Without prejudice to any other term or condition of this contract the Contractor shall comply in all respects with the provisions of any statute, statutory instrument, rule of regulation in force from time to time relating to:

43.1.1

health and safety issues relevant or applicable to the goods, works and/or services to be provided to the council hereunder and shall bear the penalty for any contravention of the standard provisions relating to health and safety; and

43.1.2

Equal opportunities. In particular, the Council requires the Contractor to be committed to a policy of treating all its employees and job applicants equally. No employee or potential

employee shall receive less favourable treatment or consideration on the grounds of race colour religion or belief nationality ethnic or national origins sexual orientation gender re-assignment age disability marital status or part-time status or be disadvantaged by any conditions of employment that cannot be justified as reasonably necessary on operational grounds.

VOB: 36. Provisions regarding occupational health and safety and environmental protection

In the course of contract execution and implementation, the contractor undertakes to observe the applicable provisions and recognised engineering standards, especially with regard to occupational health and safety, as well as the provisions applicable under construction, trade and transport legislation (in particular, supervisory and road safety obligations on construction sites and in other working areas); this shall also apply to the applicable environmental protection and waste disposal regulations. Goods and services shall comply with the laws, regulations and directives prevailing at the time of the delivery and/or acceptance.

Unless otherwise agreed in the individual contract, the Contractor as waste producer shall be responsible for all the waste produced during work execution and performance of the purchase order, e.g. packaging material, scrap material, offcuts, etc. With acceptance of the purchase order the Contractor shall ensure that it immediately and properly disposes of the waste produced by it as waste producer in line with the legal provisions, in particular the German Closed Substance Cycle and Waste Management Act, including the legislative provisions that implement the act, as well as the State Waste Acts and Articles of Association of the municipalities, the German Water Management Act, the German Road Haulage Act, the German regulations governing the transport of dangerous goods by road and rail as well as the German Ordinance on Hazardous Substances, respectively as amended from time to time.

The Client shall be entitled to examine whether the Contractor or subcontractor has fulfilled its public law or contractual obligations. To this end, the Client may, among other things, inspect the record books to be kept by the Contractor or its subcontractor under public law and the notice of approval of the plant started _____ up. At the request of the Client, the contractor shall inform the Client in advance about the transport, suitable vehicles, routes of transport and locations of the respective plants or storage sites, in particular.

When delivering to the Client or the Purchaser any hazardous materials or products containing hazardous materials that are subject to the German Ordinance on Hazardous Substances then the offer/delivery shall be accompanied by safety data sheets as per Regulation (EC) No. 1907/2006 in connection with section 6 German Ordinance on Hazardous Substances In case of change of composition or new information regarding the material's/preparation's effects on humans and environment, the Contractor shall immediately send to the Client or the Purchaser an updated safety data sheet, stating order number, order item and material number. Delivery of safety data sheets shall be part of the agreed scope of service; the thus related costs of the Contractor shall be included in the prices.

Machines coming under the 9th Ordinance of the German Product Safety Act – Machinery Ordinance– and electrical operating equipment coming under the low voltage directive must include a CE mark and be delivered with operating instructions. The declaration of conformity and the operating instructions shall be handed over to the Client and the service recipient. Deliveries of machines not ready for use must include a manufacturer's declaration.

FIDIC: 4.2 Security of the Site

- Unless stated in COPA;
 - Contractor responsible for security of the site and entry of authorized personnel.

6.2 Health and Safety

- Take care of health of all at the site in conjunction with local medical aid available
- To appoint a safety officer
- Shall send details to the Engineer of any accidents as soon as practicable
- Maintain records of health and safety as may be required by the Engineer.

Australia: 2.19. Conduct at Agency Premises:

The Supplier must, when using Commonwealth premises or facilities, comply with all reasonable directions of the Commonwealth, and act consistently with the behaviours set out in section 13 of the *Public Service Act 1999*.

VOB: 5. Code of Conduct

The Client expects the Contractor to support compliance with the regulations and principles expressed in the Code of Conduct and, in particular, to commit itself to supporting and implementing the principles on human rights, labour relations, the environment and anti-corruption laid down under the Global Compact Initiative of the United Nations.

FIDIC: 4.2 Contractors' Operations on Site

- Work within the site or adjacent area as directed by the Engineer
- Keep equipment within the authorized site
- Site to be kept clean and unwanted things to be disposed off
- Goods used during Defects Notification Period may be retained at site.

Australia: 2.20. Supplier not to make representations:

The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth. The Contract does not create a relationship of employment, agency or partnership between the parties.

FIDIC: 6.2 Disorderly Conduct

- Precautions to be taken for prevention of any unlawful, riotous or disorderly conduct amongst the contractors' personnel.

Australia: 2.21. Privacy Requirement:

The Supplier agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988 (Cth)* and do (or refrain from doing) anything required to ensure that the Commonwealth is able to comply with its obligations under that Act.

Australia: 2.22. Confidential Information:

The Supplier agrees not to disclose to any person, other than the Commonwealth, any confidential information relating to the Contract or the Supplies, without the prior written approval of the Commonwealth.

This obligation will not be breached where the Supplier is required by law or a Stock Exchange to disclose the relevant information.

The Commonwealth is not bound to keep any information in connection with the Contract confidential except to the extent it has agreed in writing to keep specified information confidential.

JCT: 41. Data Protection

41.1

The Contractor shall not disclose or allow access to any personal data provided by the Council or acquired by the Contractor during the course of tendering for or executing the Contract, other than to a person employed or engaged by the Contractor or any Sub-Contractor, agent or other person concerned with the same.

41.2

Any disclosure of or access to personal data allowed under Clause 41.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.

41.3

The Contractor shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Council.

41.4

If the Contractor fails to comply with the provisions of this Clause 41 the Council may determine the Contract by notice in writing to the Contractor provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

41.5

The decision of the Council upon matters arising under this clause shall be final and conclusive.

VOB: 39. Confidentiality

The Contractor, its own personnel and the personnel of its subcontractors shall be obliged to treat confidential any business and technical information that becomes known to them within the scope of business relations (e.g. also the date/period of a revision or a measure) and that is not publicly known, and to not disclose such information to third parties.

Any employees, including the employees of the Contractor's subcontractors, shall be correspondingly committed.

40. Data protection

RWE Service shall be entitled to collect, process and use the data arising in connection with the contractual relationship in accordance with the Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG) as amended, and to pass this data on to companies affiliated with RWE AG within the meaning of sections 15 ff of the German Stock Corporation Act (AktG).

To safeguard operational routines and to meet RWE's safety requirements, the performance of orders shall involve the collection, processing and use of personal data whilst observing the provisions of the German Data Protection Act (BDSG). This refers, in particular, to data and images of security components (e.g. ID cards, ID card management systems, time/access and video systems, etc.), of RWE's IT and telco components as well as of infrastructures connected with the same. _____

The Contractor shall ensure that any ID cards it receives are not abused or shared with third parties.

Where applicable, they shall be visibly displayed by the relevant persons on RWE premises; any loss shall be reported to RWE immediately.

Any information processing and/or telecommunications resources supplied by RWE (e.g. personal computers, landline telephones, mobile telephones, Blackberries, software, Internet access, e-mail, etc.) may only be used as part of performing an order and shall not be used for private purposes.

The Contractor shall ensure that all its agents entrusted with performing an order (e.g. permanent staff, temporary staff etc.) are instructed concerning the aforementioned points before the performance of work/services and that they are placed under suitable commitments. Any such agents shall subsequently also be placed under an obligation to assume proper conduct and to comply with the relevant RWE regulations.

When engaging subcontractors, the Contractor shall ensure that those subcontractors enter into the same commitments through suitable contracts.

The Contractor shall provide evidence of implementation of these points towards RWE upon request.

All personal data shall be collected, processed and used under contract information processes as defined in section 11 of the German Data Protection Act (BDSG). Requirements on the Client and Contractor are specified in the Supplementary Provisions on Data Protection (Contract Data Processing) (ZB/D).

Any details shared by the Client shall not be used for the purpose of advertising or market/opinion research unless express written permission has been given for this purpose by the Client.

FIDIC: 17.2 Intellectual and Industrial Property Rights

- “infringement” means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right
- Claims to be raised within 28 days of receiving any claim by either party
- Employer to indemnify and hold the contractor harmless against claims which was due to
 - (a) an unavoidable result of the Contractor’s compliance with the Contract, or
 - (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- Contractor shall indemnify and hold employer harmless manufacture, use, sale or import of any goods and any design which was contractors’ responsibility.

Australia: 2.23. Record Keeping:

The Supplier must maintain proper business and accounting records relating to the supply of the Supplies and allow the Commonwealth or its authorised representative to inspect those

records when requested. The Supplier will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Supplier's accounts and records.

VOB: 8. Daily progress reports

From the commencement of construction, the Contractor shall write regular daily construction reports and submit them to the Client and in copy to the Purchaser promptly upon request. The daily progress reports shall contain all information that may be relevant for the execution and billing of the order, especially with regard to staff assignment (number of employees, qualification), work performed and boundary conditions (temperature, humidity).

FIDIC: 4.1 Progress Report

- Unless stated in COPA, monthly PR to be given to Engineer in six copies within 7 days after month end.
- First report to cover period up to end of 1st calendar month from date of commencement
- Report shall include;
 - Progress charts, contractors' docs, procurement including works by Nominated Subcontractor
 - Photographs of progress of manufacture and works
 - Records of contractors' equipment and personnel
 - QA docs, test results
 - List of notices of Contractors' and Employers' claim
 - Safety stats and reports
 - Comparison of actual and planned work

Australia: 2.24. Freedom of Information (FOI) Amendment (Reform) Act 2010

Requirements: Where the Commonwealth has received an FOI request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract, the Supplier must promptly provide the document to the Commonwealth, on request, at no cost.

JCT: 39. Freedom of Information

39.1

For the purposes of this Clause 39:

39.1.1

“FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

39.1.2

“Information” has the meaning given under Section 84 of the Freedom of Information Act 2000.

39.1.3

“Information Request” means a request for any Information under the FOI Legislation.

39.2

The Contractor acknowledges that the Council:

39.2.1

is subject to the FOI Legislation and agrees to assist and co-operate with the Council (at the Contractor’s expense) to enable the Council to comply with its obligations under the FOI Legislation; and

39.2.2

may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

39.3

Without prejudice to the generality of clause 39.2, the Contractor shall and shall procure that its sub-contractors (if any) shall:

39.3.1

transfer to the Authorised Officer (or such other person as may be notified by the Council to the Contractor) each Information Request relevant to the Contract or the Services that it or they (as the case may be) receive as soon as practicable and in any event within two working days of receiving such Information Request; and

39.3.2

in relation to Information held by the Contractor or in its possession or power, provide the Council with details about and/or copies of all such Information that the Council requests and such details and/or copies shall be provided within five working days of a request from the Council (or such other period as the Council may reasonably specify), and in such forms as the Council may reasonably specify.

39.4

The Council shall be responsible for determining at its absolute discretion whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the

FOI Legislation. In no event shall the Contractor respond directly to an Information Request unless expressly authorized to do so by the Council.

39.5

The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

Australia: 2.25. Commonwealth Records and Archives Act

1983 Requirements: The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983 (Cth)*) without the prior written consent of the Commonwealth.

Australia: 2.26. Moral Rights:

To the extent permitted by laws and for the benefit of the Commonwealth, the Supplier consents, and must use its best endeavours to procure that each author of Material consents in writing, to the use by the Commonwealth of Material, even if the use may otherwise be an infringement of their Moral Rights.

Australia: 2.27. Notices:

Any notice or communication under the Contract will be effective if it is in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Statement of Requirement.

JCT: 31. Notices

31.1

Any notice to be served on either of the parties by the other shall either be sent by pre-paid recorded delivery or registered post (in which case it shall be deemed to have been received by the addressee two working days after posting) or sent by facsimile transmission (in which case if it is sent before 4.00 p.m. on a working day it shall have been deemed to have been received on the day of transmission otherwise the next working day). For the purposes of this Clause, working days are Monday to Friday inclusive but excluding bank and public holidays.

Australia: 2.28. Assignment:

The Supplier must not assign any of its rights under the Contract without the prior written consent of the Commonwealth.

FIDIC: 1.3 Assignment

- Neither parties shall assign whole or part or any benefit w/o prior agreement of the other parties.

Australia: 2.29. Specified Personnel:

The Supplier must ensure that the Specified Personnel provide the Supplies and are not replaced without the prior consent of the Commonwealth.

At the Commonwealth's request, the Supplier, at no additional cost to the Commonwealth, must promptly replace any Specified Personnel that the Commonwealth reasonably considers should be replaced with personnel acceptable to the Commonwealth.

JCT: 13. Contractor's Superintendence

13.1

The Contractor shall ensure that a Contract Manager is appointed and empowered to act on behalf of the Contractor and is available to the Council in person, throughout the period the Contractor's staff are on duty.

13.2

The Contractor shall forthwith upon appointment of its Contract Manager inform the Council in writing of details appertaining to this appointment. The Contractor may remove and replace the Contract Manager from time to time and must give written notice to the Authorised Officer at the time of so doing. The Contractor shall also inform the Council in writing of details of any person authorised from time to time to act as deputy for the Contract Manager.

13.3

The Contract Manager shall inform the Authorised Officer promptly and in writing of any instances of activity or omission on the part of the Council which preclude the Contractor from meeting its obligations under the Contract.

13.4

The Contractor will be required to make available the Contract Manager or authorised deputy with full powers to act on the Contract during core opening hours as described in the Specification for the services. The Contractor will also be required to make available the Contract Manager or deputy for call out in the case of emergencies.

FIDIC: 4.3 Contractors' Representative

- Shall appoint a representative with all authority to execute the contract
- If name not in the contract, prior to commencement date, submit a name to the Engineer for consent

- Shall not revoke appointment w/o prior consent of the Engineer
- For temporary absence suitable replacement provided with prior consent of the Engineer
- Shall take instructions from Engineer
- Can delegate/revoke any powers, functions and authority but shall not be effective until Engineer receives prior notice signed by the Contractors' Representative
- Shall be fluent in the language for communications as defined.

Australia: 2.30. Subcontracting:

Subcontracting the whole or part of the Supplier's obligations under the Contract will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must make available to the Commonwealth the details of all subcontractors engaged to provide the Supplies under the Contract. The Supplier acknowledges that the Commonwealth is required to disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier for the purpose of fulfilling its obligations under the Contract imposes on the subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

JCT: 44. Sub-contractors

44.1

Without prejudice to Clause 25 above or any other indemnity on the part of the Contractor contained or implied within the Contract

44.1.1

It shall be a condition of any approved sub-contracting that the employment of the Sub-Contractor under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under the Contract.

44.1.2

The Contractor shall ensure that the terms and conditions of any sub-contract shall take due and proper account of the terms and conditions of the Contract and that nothing contained or implied within any sub-contract shall prevent, prohibit, hinder or restrict the Contractor in any way from observing and performing his rights, duties and obligations (or any of them) under the terms of the Contract with the Council.

44.1.3

The Contractor shall indemnify and keep indemnified the Council in full from and against all direct, indirect or consequential loss, damages, injury claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in

connection with any breach, non-observance or non-performance on the part of the Contractor of this Clause 44.

VOB: 4. Subcontractors

If the Contractor on its part would like to subcontract work to third parties, the prior written consent of the Client shall be obtained. Correspondingly, this shall apply to the change of or the use of other subcontractors. The Contractor shall ensure that the subcontractor will not subcontract the work assigned to it without the prior written consent of the Client. The Contractor shall in particular ensure that all subcontractors comply with the Client's occupational safety regulations. The Client shall be entitled to reject subcontractors proposed by the Contractor on factual grounds, such as quality of work, credit standing and/or inadequate schedule effectiveness, non-compliance with the occupational safety regulations.

FIDIC: 4.3 Subcontractors

Shall not subcontract the whole of the Works

Contractor responsible for the acts of the sub contractor

If the subcontractor is mentioned in the contract no consent to be obtained unless specified in COPA, for others it is required

Contractor to give 28days notice before commencement of subcontractors' work

Entitlement of the employer to assign the subcontractor to the Employer be mentioned in the subcontract for Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

Australia: 2.31. Termination:

The Commonwealth may terminate the Contract in whole or in part if:

- (a) the Supplier does not deliver all of the Supplies to the delivery location by the relevant delivery date, or notifies the Commonwealth that it will be unable to deliver the Supplies to the delivery location by the relevant delivery date;
- (b) the Commonwealth rejects any of the Supplies in accordance with the Acceptance clause of these Commonwealth General Conditions of Contract;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remedy a breach of the Contract which is capable of remedy within the period specified by the Commonwealth in a notice of default issued to the Supplier; or
- (e) The Supplier:
 - (i) is unable to pay all its debts when they become due;

(ii) if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the Corporations Act 2001 appointed to it; or

(iii) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the Bankruptcy Act 1966.

FIDIC: 15.1 Termination by the Employer

- Employer can terminate if the contractor;
 - Fails to comply with performance security or notice to correct
 - Abandon or plainly demonstrates no intent of carrying out Works
 - w/o reasonable excuse fails
 - to proceed with to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
 - Sub contracts the whole works w/o the required agreement
 - Becomes bankrupt, compounds with creditors, receives or administration order made against him,
 - Bribe, gift, gratuity, commission, for doing or showing favor or disfavor in relation with the contract either by contractor or his personnel
- Employer to give 14days notice and terminate and expel the contractor from site, however for last two reasons stated above the termination can be immediate
- Contractor to leave the Site and deliver any goods, all docs made by or for him to the engineer and shall make all good efforts to comply to any reasonable instructions in the order for assignment of subcontract and protection of life and works
- Clear equipment and temporary works promptly at his cost and risk.

15.1 Valuation at Date of Termination

- After notice of termination Engineer to determine value of the Works and Contractors documents and any other sum due to the contractor.

15.2 Payment after Termination

- After notice has taken effect employer
 - To work out employers Claim
 - Withhold further payments until all dues have been established
 - Recover any losses and damages and any extra cost of completing works.

15.3 Employers' Entitlement to Termination

- Employer can terminate, for his convenience any time by giving a date
- Termination to take effect 28 days after the latter of return of performance guarantee or receipt of the notice
- Cannot be for giving work to some other party
- After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and

shall be paid in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release].

Australia: 2.32. Termination or Reduction for Convenience:

In addition to any other rights it has under the Contract, the Commonwealth, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Supplies by notifying the Supplier in writing. If the Commonwealth issues such a notice, the Supplier must stop or reduce work in accordance with the notice; comply with any directions given by the Commonwealth; and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.

Where the Contract is terminated under this clause, the Commonwealth will be liable for payments to the Supplier only for Supplies accepted in accordance with the Acceptance Clause in these Commonwealth General Conditions of Contract, before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any reasonable costs incurred by the Supplier that are directly attributable to the termination or the reduction in scope, if the Supplier substantiates these amounts to the satisfaction of the Commonwealth.

The Supplier will be entitled to profits for the proportion of the Supplies accepted before the effective date of termination but will not be entitled to profit anticipated on any part of the Contract that is terminated or subject to a reduction in scope.

VOB: 33. Right of termination

The Contractor may terminate the contract at any time until completion of the work to be performed. In this case, the Contractor shall be entitled to the remuneration agreed in the contract. However, a deduction shall be made for the costs saved by the Contractor due to the cancellation of the contract or any income earned by the Contractor by using its working capacity or business elsewhere or which the

Contractor refrains from earning with malicious intent (section 649 German Civil Code (BGB)).

The Client may terminate the contract in particular if the Contractor suspends its payments or applies for insolvency proceedings or comparable legal proceedings or such proceedings are opened or the opening of such proceedings is rejected for insufficiency of assets. In this case, settlement and the Client's claims for damages due to non-compliance shall be based on section 8 no. 2 para. 2 VOB/B. _____

Otherwise, the Client's right of termination and the execution of the contract following such termination shall be based on section 8 VOB/B. Section 9 VOB/B shall apply to the Contractor's right of termination, including settlement.

Australia: 2.33. Survival:

Clauses 2.10, 2.21, 2.22, 2.23, 2.24 and 2.25 of this Commonwealth General Conditions of Contract and clause 1.7 [Intellectual Property] of the Statement of Requirement, survive termination or expiry of the Contract.

Australia :2.34. Dispute Resolution:

For any dispute arising under the Contract:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a notice setting out the details of the dispute;
- (c) within five business days, each Contract Manager will nominate a senior representative, not having prior direct involvement in the dispute;
- (d) the senior representatives will try to settle the dispute by direct negotiation; and
- (e) failing settlement within a further 10 business days, either the Commonwealth or the Supplier may commence legal proceedings.

The Commonwealth and the Supplier will each bear its own costs for dispute resolution.

Despite the existence of a dispute, the Service Provider will (unless requested in writing by the Commonwealth not to do so) continue its performance under the Contract.

The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

JCT: 26. Alternative dispute resolution

26.1

The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

26.2

If the dispute cannot be resolved by the parties pursuant to Clause 26.1, the dispute may, by agreement between the parties, be referred to mediation pursuant to Clause 26.4 hereof.

26.3

The provision of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 26.2 hereof.

26.4

The procedure for mediation and consequential provisions relating to mediation are as follows:

26.4.1

a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;

26.4.2

the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

26.4.3

unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

26.4.4

if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Council and the Contractor;

26.4.5

failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties;

26.4.6

if the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

FIDIC: 20.2 Appointment of the Dispute Adjudication Board

Either one or three suitably qualified persons

If DAB not appointed 21 days before the appointment date in the contract, each party to nominate one member and these members to nominate the third member, who acts as the chairman

Payments given to the DAB or any specialized consultancy seek by the DAB shall be divided equally amongst the parties.

20.3 Failure to agree on the Composition of the Dispute Adjudication Board

The appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB.

This appointment shall be final and conclusive.

20.4 Obtaining Dispute Adjudication Boards' Decision.

Any dispute be sent to the DAB with a copy to the other party Also provide, the DAB, with all data and access to the site etc. related to the dispute.

DAB to give its decision in 84 days, or as decided.

Shall be binding on both the parties, however delay in decision or dissatisfaction of the decision can be conveyed to the other party and the intent to commence arbitration also conveyed.

If dissatisfaction not conveyed within 28 days of the decision, the decision be final and binding.

20.5 Amicable Settlement

After notice of dissatisfaction, attempt to resolve the issue amicably between both parties be done, before commencement of the arbitration

Arbitration to start on or after 56 days of the notice of dissatisfaction

20.6 Arbitration

Proceedings as mentioned in COPA

If no proceedings mentioned, the dispute settled as per rules of Arbitration of the International Chamber of Commerce,

Settled by three arbitrators

Nothing shall disqualify the Engineer from being called as a witness

Arbitration may be commenced prior to or after completion of the Works.

20.7 Failure to Comply with Dispute Adjudication Boards' Decision

Failure to comply can be referred to the arbitration by the other party.

20.8 Expiry of the Dispute Adjudication Boards' Appointment

If any claim arises when the DAB is not in place then the issue can be taken to arbitration directly without applying clauses 20.4 and 20.5.

Australia: 2.35. Compliance with Laws:

The Supplier must ensure that it and all subcontractors comply with all relevant laws in connection with the Contract.

Australia: 2.36. Applicable Law:

The laws of the Australian Capital Territory applies to the Contract.

JCT: 3. Legislation

3.1

The Contractor and its employees shall comply and conform in all respects with the provisions from time to time of any Acts of Parliament and all Statutory Instruments and Regulations relevant to the subject matter of this Contract including (but without prejudice to the generality of the foregoing) all legislation and regulations from time to time in force pertaining to any Minimum Wage.

FIDIC: 1.1.6.5 "Laws"

- all national (or state) legislation, statutes, ordinances and
- other laws, and regulations
- by-laws of any legally constituted public authority.

Australia: 2.37. Entire Agreement:

The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers (except to the extent they are incorporated into the Contract in writing) and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

Australia: 2.38. Definitions: In the Contract:

"Commonwealth" means the Commonwealth of Australia as represented by the agency named in the Statement of Requirement.

"Contract Manager" means the contract manager specified in the Statement of Requirement.

"Contract" means the contract as described in clause B.2 of the Standard Form Contract into which these Commonwealth General Conditions of Contract are incorporated.

“Contract Price” means the total contract price specified in the Statement of Requirement, including any GST component payable, but for the purposes of the Payment clause of these Commonwealth General Conditions of Contract only, does not include any simple interest payable on late payments.

“Encumbrance” means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

“General Interest Charge Rate” means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

“GST” means a Commonwealth goods and services tax imposed by the *GST Act*.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Intellectual Property Rights” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

“Material” means any material brought into existence as a part of, or for the purpose of producing the Supplies, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” means the right of attribution of authorship of work, the right not to have authorship of work falsely attributed and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

“Small Business” means an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole.

“Special Conditions” means the special conditions attached to the Statement of Requirement by the Commonwealth (if any).

“Specified Personnel” means the personnel specified in the Contract to provide the Supplies.

“Statement of Requirement” means the Statement of Requirement set out in the Contract.

“Supplier” means the supplier specified in the section of the Contract entitled “Parties”.

“Supplies” means:

- (a) the Goods, Services, or Goods and Services specified in the Statement of Requirement; and
- (b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Commonwealth as specified in the Statement of Requirement.

JCT: 1. Definitions

1.1 “Best Value Duty”

Means the duty imposed on the Council by Part 1 of the 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the Guidance issued from time to time by the Secretary of State, Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

1.2 "Best Value Performance Plans"

Means the best value performance plans which are required to be provided by the Council each financial year in accordance with section 6 of the 1999 Act.

1.3 "Best Value Review"

Means the review which is required to be conducted by the Council in accordance with section 5 of the 1999 Act.

1.4 "Best Value Review Benchmarking Exercise"

Means the benchmarking exercise to be undertaken in relation to the Services in accordance with Clause 21 (Best Value).

1.5 "Best Value Review Benchmarking Exercise Date"

Means the date [18 Months] after the Commencement Date and each anniversary thereof during the duration of the Contract or any other date the Council nominates to carry out the Best Value Review Benchmarking Exercise not being more often than once every year.

1.6 "Code"

Means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D. <http://www.communities.gov.uk/corporate/>

1.7 "Code Obligations"

Means the express obligations of the Contractor in Clause 42 (other than that in Clause 42.9) which derive from the Code.

1.8 "Confidential Information"

Means any information which is disclosed by one party to the other pursuant to or in connection with the Contract (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such). For the purposes of this definition, confidential information also includes information provided to the Council in connection with the Contractor's tender for the Services.

1.9 "Contract Price Rates"

Means the sums exclusive of Value Added Tax, payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of the Contract.

1.10 "Contract Term"

Means the period referred to in Clause 6 (Contract Term).

1.11 "Customer Satisfaction Survey Date"

Means the date 18 Months after the Commencement Date and each anniversary thereof during the duration of the Contract or other such date the Council nominates to carry out the Customer Satisfaction Survey not being more often than once every year.

1.12 "Customer Satisfaction Survey"

Means the survey more particularly described in Clause 21.

1.13 "Directive"

Means the EU Acquired Rights Directive 77/187 as amended or consolidated from time to time

1.14 "Extended Period(s)"

Means the period defined in Clause 7 (Option to Extend the Contract Term).

1.15 "Local Government Pension Scheme"

Means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.

1.16 "New Employees"

Means those new employees employed by the Contractor to provide the Services who will be working alongside the Transferring Employees.

1.17 "Parties"

Means the Council and the Contractor and "Party" shall mean either of them as the case may require.

1.18 "Regulations"

Means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended or modified from time to time.

1.19 "Relevant Employees"

Means the employees who are the subject of a Relevant Transfer.

1.20 "Relevant Transfer"

Means a relevant transfer for the purposes of the Regulations.

1.21 "Sub-Contractor"

Means a person to whom the Contractor sub-contracts any of its obligations under the Contract.

1.22 "The 1999 Act"

Means the Local Government Act 1999.

1.23 "The Authorised Officer"

Means the officer designated by the Council or any other officer authorised by the Council for the purposes of the Contract.

1.24 "The Commencement Date"

Means the date on which the Contractor is to commence the provision of the Services.

1.25 "The Conditions"

Means the general terms and conditions of contract as set out in this document.

1.26 "The Contract"

Means the agreement concluded between the Council and the Contractor for the provision of the Services, including all specifications, plans, drawings and other documents which are relevant to the Contract.

1.27 "The Contractor"

Means the individual or firm or company whose Tender shall have been accepted by the Council, and where the Contractor is an individual or partnership the expression shall include the personal representatives of that individual or of the partners, as the case may be.

1.28 "The Contract Manager"

Means the person appointed by the Contractor to act as the Contractor's agent pursuant to Clause 13 (Contractor's Superintendence).

1.29 "The Council"

Means Thanet District Council.

1.30 "The Effective Date"

Means the date of the Contract.

1.31 "The Expiry Date"

Means the last day of the Contract Term referred to in Clause 6 (Contract Term) and for this purpose the Contract Term does not include any extended period(s).

1.32 "The Relevant Area"

Means the administrative area of Thanet District Council.

1.33 "The Services"

Means the whole of the services or any of them to be provided by the Contractor pursuant to the Contract or such of them as may from time to time remain the subject of the Contract.

1.34 "Transfer Date"

Means the date the Transferring Employees are transferred to the employment of the Contractor.

1.35 "Transferring Employee"

Means an employee, whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out a contract between the Council and the Contractor, a contract of employment with someone other than his existing employer.

FIDIC: 1.1 Definitions :

- Applicable to GC and COPA
- Words indicating persons or parties include corporations and other legal entities.

1.1.1 The contract

1.1.1.1 "Contract" -

- Contract Agreement,
- the Letter of Acceptance,
- the Letter of Tender,
- these Conditions,
- the Specification,
- the Drawings,
- the Schedules,
- further documents (if any)
Listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "Contract Agreement"

- contract agreement (if any)
 - Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 "Letter of Acceptance"

- letter of formal acceptance,
- signed by the Employer,

- of the Letter of Tender,
- including any annexed memoranda comprising agreements between and
- signed by both Parties
- If no then it is the Contract Agreement
- date of signing the Contract Agreement – date of issuing or receiving

1.1.1.4 “Letter of Tender”

1.1.1.5 “Specification”

Also includes additions and modifications.

1.1.1.6 “Drawings”

Issued by (or on behalf of) the Employer

1.1.1.7 “Schedules”

The Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “Tender”

- Letter of Tender and
- all other documents submitted by contractor, as included in the Contract.

1.1.1.9. “Appendix to Tender”

1.1.1.10 ““Bill of Quantities” and “Daywork Schedule” as titled.

1.1.2 Parties and Persons

1.1.2.1 “Party

- Employer or the
- Contractor

1.2.2.2 “Employer”

- person named as employer in the Contract Data
- and the legal successors in title to this person.

1.1.2.3 “Contractor”

- person(s) named as contractor in the Letter of Tender accepted by the Employer
- and the legal successors in title to this person(s).

1.1.2.4 “Engineer”

- appointed by the Employer
- named in the Contract Data,
- appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].

1.1.2.5 “Contractor’s Representative”

- named by the Contractor
- or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.

1.1.2.6 “Employer’s Personnel”

- Engineer,
- the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer]
- all other staff, labour and other employees of the Engineer and of the Employer;
- any other personnel notified to the Contractor, by the Employer or the Engineer,

1.1.2.7 “Contractor’s Personnel”

- Contractor’s Representative
- All personnel whom the Contractor utilises on Site,
- of each Subcontractor

1.1.2.8 “Subcontractor” So named

1.1.2.9 “DAB”

- person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or
- Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board].

1.1.2.10 “FIDIC”

- Fédération Internationale des Ingénieurs-Conseils,
- The international federation of consulting engineers.

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “Base Date”

- 28 days prior to the latest date for submission and Completion of the Tender.

1.1.3.2 “Commencement Date”

- Sub-Clause 8.1 [Commencement of Works].

- Notice of not less than 7days given by the engineer
- Within 42 days after receiving LoA unless in COPA

1.1.3.3 “Time for Completion”

- Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion],
- with any extension under Sub-Clause 8.4 [Extension of Time for Completion],
- calculated from the Commencement Date.

1.1.3.4 “Tests on Completion”

- Clause 9 [Tests on Completion]

1.1.3.5 “Taking-Over Certificate”

- Clause 10 [Employer’s Taking Over].

1.1.3.6 “Tests after Completion”

- after the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.7 “Defects Notification Period”

- period for notifying defects in the Works or a section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects],
- with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]),
- calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over ofthe Works and Sections]

1.1.3.8 “Performance Certificate”

- Sub-Clause 11.9 [Performance Certificate].

1.1.3.9 “day” means a calendar day and “year” means 365 days.

1.1.4 Money and Payments

1.1.4.1 “Accepted Contract Amount”

- amount accepted in the Letter of Acceptance
- and the remedying of any defects.

1.1.4.2 “Contract Price”

- price defined in Sub-Clause 14.1 [The Contract Price],
- and includes adjustments in accordance with the Contract.

.1.4.3 “Cost”

- all expenditure reasonably incurred (or to be incurred)
- whether on or off the Site,
- including overhead and similar charges,
- does not include profit.

1.1.4.4 “Final Payment Certificate”

- issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

1.1.4.5 “Final Statement”

- Sub-Clause 14.11 [Application for Final Payment Certificate].

1.1.4.6 “Foreign Currency”

- currency in which part (or all) of the Contract Price is payable,
- but not the Local Currency.

1.1.4.7 “Interim Payment Certificate”

- Clause 14 [Contract Price and Payment],
- other than the Final Payment Certificate.

1.1.4.8 “Local Currency” means the currency of the Country.

1.1.4.9 “Payment Certificate”

- Clause 14 [Contract Price and Payment].

1.1.4.10 “Provisional Sum”

- (if any) which is specified in the Contract as a provisional sum,
- for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

1.1.4.11 “Retention Money”

- accumulated retention moneys
- Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] pays under Sub-Clause 14.9 [Payment of Retention Money].

1.1.4.12 “Statement”

- submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.

1.1.5 Works and Goods

1.1.5.1 “Contractor’s Equipment”

- all apparatus, machinery, vehicles etc.
- excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 “Goods”

- Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

1.1.5.3 "Materials"

- things of all kinds (other than Plant)
- intended to form or forming part of the Permanent Works,
- including the supply-only materials (if any) to be supplied by the Contractor

1.1.5.4 "Permanent Works"

- permanent works to be executed by the Contractor under the Contract.

1.1.5.5 "Plant"

- apparatus, machinery and vehicles
- form or forming part of the Permanent Works.

1.1.5.6 "Section"

- part of the Works specified Section (if any).

1.1.5.7 "Temporary Works"

- temporary works of every kind
- (other than Contractor's Equipment)
- required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 "Works"

- Permanent Works
- Temporary Works,
- or either of them as appropriate.

1.1.6 Other Definitions

1.1.6.1 "Contractor's Documents"

- calculations,
- computer programs and other software,
- drawings,
- manuals,
- models and
- other documents of a technical nature (if any)
- supplied by the Contractor under the Contract

1.1.6.2 "Country"

- country in which the Site (or most of it) is located,
- where the Permanent Works are to be executed

1.1.6.3 "Employer's Equipment"

- apparatus, machinery and vehicles (if any) made available by the Employer
- but does not include Plant which has not been taken over by the Employer

1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].

1.1.6.5 “Laws”

- all national (or state) legislation, statutes, ordinances and
- other laws, and regulations
- by-laws of any legally constituted public authority.

1.1.6.6 “Performance Security

- security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

1.1.6.7 “Site”

- places where the Permanent Works are to be executed
- to which Plant and Materials are to be delivered,
- any other places as may be specified in the Contract as forming part of the Site.

1.1.6.8 “Unforeseeable”

- not reasonably foreseeable
- by an experienced contractor by the date for submission of the Tender

1.1.6.9 “Variation”

- any change to the Works,
- which is instructed or approved as a variation under Clause 13 [Variations and Adjustments]

SOME CONCLUSIONS AND PROPOSITIONS

DIFFERENCES AND SIMILARITIES

To get an overview of the differences and similarities of the systems under review we have concentrated on the following aspects:

- Scope
- Contents
- Structure.

Some other aspects which are part of the environment in which the systems operate and which influence their development have also been examined.

Scope

This can be considered in two ways. The first concerns the overall scope of the system, that is, which types of construction work does it cover? Most of the systems (in combination where there are more than one national organisation producing specifications) appear to be generally comprehensive in their coverage. However it has been beyond the resources of the Working Group to determine whether this really is so and how the depth coverage of each category of work differs between the specification systems.

The second consideration concerns the phases of the construction process in which the systems are used. The construction process can roughly be divided into:

- The inception phase
- The design phase
- The production phase.

During the lifetime of the building these phases may be repeated, as in maintenance projects, renovation, restoration and demolition. Also facility management may use some of the information produced during the construction process.

The phases in the construction process covered by the specification systems are very much dependent on the related contracting procedures and methods of tendering. Most tendering takes place at the end of the design phase and in most systems the emphasis is on specifications for this type of contract. However, other types of contracts have been introduced, such as “design and build” which are initiated earlier in the construction process. Specifications have to follow this trend and this development can be seen, for example, in the increasing use of performance specification. In the other direction there is more interest in using information produced during the construction phase in facility management. These two trends are widening the scope of specification systems. Differences between the systems investigated in this report are at their greatest in this respect.

Contents

A related question is the scope and content of the specification systems and the level of detail which they contain.

We know at this stage that most organisations produce and maintain libraries of descriptions, but have been unable to compare their comprehensiveness and degree of detail. Nor have we been able to establish what the average detail of project specifications is in the various countries and how much the project specifications incorporate information directly or by reference to standards.

As a consequence of specifications mainly being used with “conventional” contracts, all of the systems have been developed to specify items of work. With other types of contractual arrangement and for facilities management this mode is often inappropriate. Specifications at the inception phase or at the beginning of the design phase cannot be based on work sections. Instead the performance criteria of spaces and elements must be specified. Not all of the systems have the ability to do this and those which have seem to differ substantially in the way they do it.

Structure

All of the systems include “items of work” specifications and therefore are structured by work sections. For some systems this is the only structure. Others include other classifications like elements, trades and products. Specification systems with a single structure are hierarchical, those with combined structures are faceted or based on a relational model. Most systems use a word processor environment, which means that a “delete unwanted text” or “cut and paste” technique is used to produce project specifications out of library specifications. In the word processor environment it is (nearly) impossible to use the contents of the specifications in an automated way; the information is only interpretable by humans. One system uses a relational database technique. In relational systems bits of information can have a meaning understood by the computer by defining attributes and possible ranges of values so that the information to be interpreted by the system and processed without human intervention.

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