



NZS3910:2013 Conditions of Contract for building and civil engineering construction

Avatiu Punanganui Market Bridge Replacement

Contract No. 192010

Date of Release: 4 September 2019

Between

Infrastructure Cook Islands

and

[Insert Contractor](#)

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NZS 3910:2013 Conditions of contract for building and civil engineering construction

Contract Agreement

CONTRACT FOR	Avatiu Punanganui Market Bridge Replacement	<i>(Contract name)</i>
CONTRACT NUMBER	Click to enter text	<i>(Number)</i>
THIS AGREEMENT is made on	Click to enter a date	
BETWEEN	Click to enter text	<i>(‘the Contractor’)</i>
AND	for and on behalf of Her Majesty the Queen acting by and through Infrastructure Cook Islands	<i>(‘the Principal’)</i>

IT IS AGREED as follows:

1. The Contractor shall carry out the obligations imposed on the Contractor by the Contract.
2. The Principal shall pay the Contractor the sum of \$ [Click to enter text](#) or such greater or lesser sum as shall become payable under the Contract together with goods and services tax at the times and in the manner provided in the Contract.
3. Each party agrees to the terms and conditions as set out in the Contract.
4. The Contract comprises the following documents:
 - (a) This Contract Agreement;
 - (b) The notification of acceptance of tender or award of Contract;
 - (c) The following post-tender documents (*Identify any agreed post-tender documents to be included, for example correspondence or minutes or pre-award meetings dealing with tender tags, and so on*):
[Click to enter text](#)
 - (d) The Contractor’s tender;
 - (e) Notices to tenderers (*Give details with dates*);
[Click to enter text](#)
 - (f) Schedule 1: Special Conditions of Contract – Specific Conditions of Contract;
 - (g) Schedule 2: Special Conditions of Contract – Other Conditions of Contract;
 - (h) The General Conditions of Contract NZS 3910:2013 (including other Schedules);
 - (i) Specifications issued prior to the Date of Acceptance of Tender;
 - (j) Drawings issued prior to the Date of Acceptance of Tender;
 - (k) The Schedule of Prices; (*Select if **NOT** applicable*)
 - (l) The Schedule to the Conditions of Tendering;
 - (m) The Conditions of Tendering; and
 - (n) The following additional documents (*Identify any additional documents to be included*):
[Click to enter text](#)
5. This Contract shall constitute the entire agreement between the parties. This Contract supersedes all prior negotiations, representations, and warranties, except insofar as the same are expressly incorporated herein.

SIGNED BY [Click to enter text or paste signature](#) Authorised Signatory of Contractor

SIGNED BY [Click to enter text or paste signature](#) Authorised Signatory of Principal



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract

Contract for:	Avatiu Punanganui Market Bridge Replacement
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Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
1.	INTERPRETATION	
1.2	Definitions	
	The Principal is:	Infrastructure Cook Islands
	of:	Main Road, Arorangi, Rarotonga, Cook Islands
1.2, 10.2	Separable Portions	
	<ul style="list-style-type: none"> Are there any Separable Portions in this Contract? 	No
	<ul style="list-style-type: none"> If yes, the Separable Portions are as follows and as further defined in the Contract: 	Click to enter reference
2.	THE CONTRACT	
2.1	Type of contract	
2.1.1	This Contract is a:	<i>(select one to apply (a), (b), or (c))</i>
	(a) Lump sum contract governed by 2.2;	<input type="checkbox"/>
	(b) Measure and value contract governed by 2.3;	<input checked="" type="checkbox"/>
	(c) Cost reimbursement contract governed by 2.4.	<input type="checkbox"/>
2.4	Cost reimbursement contract	
2.4.1	Allowance(s) which are to be added to Net Cost in a cost reimbursement contract or for parts of the Contract Works which are required to be carried out on a cost reimbursement basis: <i>(If percentages are shown as zero or nil, allowances for overheads and profit are deemed to be included in Net Cost.)</i>	
	<ul style="list-style-type: none"> Allowance for On-site Overheads: 	N/A (%)
	<ul style="list-style-type: none"> Allowance for Off-site Overheads and Profit: 	N/A (%)
2.4.4	Indicative estimates of the Contract Price:	
	Are indicative estimates required?	N/A
2.5	Local authority contracts, contracts in public places, and road contracts	
2.5.1	Is this Contract a local authority contract to which 2.5.2 applies?	Yes



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
2.5.3	Is this Contract a contract in a public place to which B1 and B2 of Appendix B apply?	Yes
2.5.4	Is this Contract a road contract to which Appendix B applies?	Yes
	If yes, the allowance under B3 shall be:	20 <i>(number of Working Day)</i>
2.6	Evidence of Contract	
2.6.2	How is the Contract Agreement to be executed?	<i>(select one to apply, (a) or (b))</i>
	(a) As stated in 2.6.2;	<input checked="" type="checkbox"/>
	(b) In accordance with the following other requirements:	<input type="checkbox"/> Click to enter requirements
2.7	Documents prepared by the Engineer or Principal	
2.7.1	Copies of the Contract shall be supplied without charge to the Contractor in the following electronic form:	Pdf file
2.8	Documents prepared by the Contractor	
2.8.2	Copies of documents referred to in 2.8.2 shall be supplied without charge to the Engineer:	
	• Number of hard copy sets:	One
	• In the following electronic form:	Pdf file
3.	BONDS	
3.1	Contractor's Bond	
3.1.1	Is a Contractor's Bond required?	Yes
3.1.2	If yes, the amount of the Contractor's Bond shall be:	10% of the Contract value
3.2	Principal's Bond	
3.2.1	Is a Principal's Bond required?	No
3.2.2	If yes:	
	• The amount of the Principal's Bond shall be:	(\$) N/A
	• The surety for the Principal's Bond shall be:	N/A
5.	GENERAL OBLIGATIONS	
5.4	Possession of the Site	
5.4.1	The Contractor shall be given possession of the Site	<i>(select one to apply, (a) or (b))</i>
	(a) 10 Working Days after the Date of Acceptance of Tender:	<input type="checkbox"/>
	(b) On the following date:	<input checked="" type="checkbox"/> Date nominated by the contractor and to be agreed between the Contractor and Principal prior to acceptance of the contract.
5.4.3	Limits on the Contractor's right of entry to adjoining properties are:	landowner's prior written consent



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
5.5	Separate Contractors	
5.5.1	Separate Contractors who may be carrying out work on the Site concurrently with the Contract Works are:	Service Providers, Infrastructure Cook Islands Road Maintenance Contractors, Road Corridor Cleaning & Maintenance. TMV Water Project and Contractors
5.5.2	Are facilities for Separate Contractors required?	No
	If yes, details of facilities required are:	N/A
5.6	Care of the works and Site	
5.6.6(g)	Further risks specifically excepted are:	Nil
5.10	Programme	
5.10.4	Is the programme required to be a Comprehensive Programme?	Yes
5.10.4(e)	If yes, other requirements for the Comprehensive Programme are:	N/A
5.10.5	The Comprehensive Programme shall use the following software:	Microsoft Project
5.10.6	Updates of the Comprehensive Programme shall be provided at the following intervals:	Monthly and following any change in methodology or the works which materially affect the programme.
5.11	Compliance with laws	
5.11.3	Exceptions to the Principal's obligations to obtain licences under 5.11.3 are:	None
5.11.4	Exceptions to the Contractor's obligation to give notices and obtain other licences under 5.11.4 are:	None
5.17	Safety plan	
	Is a Site-specific safety plan required to be prepared by the Contractor?	Yes
5.18	Quality plan	
	Is a quality plan required to be prepared by the Contractor?	Yes
5.19	Traffic management plan	
	Is a traffic management plan required to be prepared by the Contractor?	Yes
5.20	As-built drawings and operation and maintenance manuals	
5.20.1(a)	Are as-built drawings required to be prepared by the Contractor?	Yes
5.20.1(b)	Are operation and maintenance manuals required to be prepared by the Contractor?	No
6.	THE ENGINEER	
6.1	Appointment of Engineer	
6.1.2	The Engineer is:	Tenga Mana
	whose professional qualification is:	Bachelor of Civil Engineering



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
8.	INSURANCES	
8.1	General	
8.1.1	The party identified below shall arrange the following insurances referred to in the following clauses:	
	8.3 or 8.8 Construction	Contractor
	8.8 Existing structure(s) and contents	Not required
	8.4 Plant	Contractor
	8.5 or 8.9 Public liability	Contractor
	8.5.2 Motor vehicle liability	Contractor
	8.6 Professional indemnity	Not required
8.1.6	The following forces of nature shall be specifically insured under 8.3 or 8.8 as applicable:	
	(a) Landslip:	No
	(b) Earthquake:	No
	(c) Tsunami:	Yes
	(d) Tornado:	No
	(e) Cyclone:	Yes
	(f) Storm:	Yes
	(g) Flood:	Yes
	(h) Lightning strike:	No
	(i) Volcanic activity:	No
	(j) Hydrothermal activity:	No
	(k) Geothermal activity:	No



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
8.3, 8.8	Construction insurance <i>(These items are required to be completed whether the Contractor or the Principal is the insuring party (see 8.1 above))</i>	
8.3.2, 8.8	The following shall have their respective interests noted in the construction insurance policy:	Principal, Contractor and Sub-Contractors
8.3.3, 8.8	Where construction insurance is required <i>(see 8.1 above)</i> , the amount of insurance to be effected for the Contract Works and Materials shall be for not less than the sum of the Contract Price, after the acceptance of the tender or other offer, plus the following allowances:	
	(a) An allowance for the Cost of demolition, disposal and preparation for replacement work, equal to:	<i>(select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> (\$) Click to enter amount
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	<input checked="" type="checkbox"/> 5 (%)
	(b) An allowance for professional fees including the Cost of clerks of works and inspectors, equal to:	<i>(select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> (\$) Click to enter amount
	(ii) The percentage in the right hand column of the Contract Price adjusted as above:	<input checked="" type="checkbox"/> 5 (%)
	(c) An allowance for items to be incorporated in the Contract Works, the Cost of which is not included in the Contract Price, equal to:	<i>(select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column	<input type="checkbox"/> (\$) Click to enter amount
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 5 (%)
	(d) An allowance for an increase in the Contract Price due to Variations equal to:	<i>(select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> (\$) Click to enter amount
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 5 (%)
	(e) An allowance for increased construction Costs due to inflation equal to:	<i>(select one to apply, (i) or (ii))</i>
	(i) The amount in the right hand column:	<input type="checkbox"/> (\$) Click to enter amount
	(ii) The percentage of the Contract Price adjusted as above, stated in the right hand column:	<input checked="" type="checkbox"/> 0 (%)



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
8.4	Contractor arranged Plant insurance	
	Where Plant is required to be insured (see 8.1 above):	<i>(select one to apply, (a) or (b))</i>
	(a) The Contractor shall insure the following items of Plant on the Site for the amounts stated:	<input type="checkbox"/> Click to enter specific items
	(b) The Contractor shall insure each item of Plant on the Site having a current market value of more than:	<input checked="" type="checkbox"/> (\$) 50,000
8.5	Contractor arranged public liability insurance	
8.5.1	Where required (see 8.1 above), public liability insurance shall be effected by the Contractor for an amount not less than:	<input checked="" type="checkbox"/> (\$) 5,000,000
	Such public liability insurance may include sub-limits:	
	<ul style="list-style-type: none"> For liability arising out of vibration, weakening or removal of support, of not less than: 	(\$) 2,500,000
8.5.2	Where required (see 8.1 above), motor vehicle third party liability insurance shall be effected for an amount not less than:	(\$) 2,000,000
8.6	Contractor arranged professional indemnity insurance	
8.6.1	Where required (see 8.1 above), professional indemnity insurance for design by the Contractor shall be effected for an amount not less than:	
	<ul style="list-style-type: none"> For any one claim: 	(\$) N/A
	<ul style="list-style-type: none"> And for an amount in the aggregate of: 	(\$) N/A
8.6.2	Sub-limits of liability for design of parts of the Contract Works by Subcontractors shall be not be less than: <i>(list specific part(s) of Contract Works and applicable \$ sub-limits for any one claim and for an amount in the aggregate, or state if not required)</i>	N/A
8.8	Principal arranged construction insurance <i>(refer also to 8.3)</i>	
	In accordance with 8.7.2, the insurance policy wording title for 8.8.1 and 8.8.2 (a), (b), and (c) is:	N/A
	In accordance with 8.7.2, the extraordinary exclusions, conditions, warranties or endorsements to the policy for 8.8.1 and 8.8.2 (a), (b), and (c) are:	N/A
8.8.1	Where the Principal is required to effect construction insurance (see 8.1 above):	
	The lead insurer is:	N/A
	Address of lead insurer:	N/A



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	N/A
	• For other claims:	N/A
	• For natural perils:	N/A
8.8.2(a)	The existing structures are:	N/A
	• The replacement value to be insured is:	(\$ N/A
	• The lead insurer is:	N/A
	• Address of lead insurer:	N/A
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	N/A
	• For other claims:	N/A
	• For natural perils:	N/A
8.8.2(b)	Other structures in the vicinity are:	N/A
	• The replacement value to be insured is:	(\$ N/A
	• The lead insurer is:	N/A
	• Address of lead insurer:	N/A
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	N/A
	• For other claims:	N/A
	• For natural perils:	N/A
8.8.2(c)	Contents insurance:	
	• The replacement value to be insured is:	(\$ N/A
	• The lead insurer is:	N/A
	• Address of lead insurer:	N/A
	The Nominal Deductibles are:	
	• For damage arising out of the Contract Works:	N/A
	• For other claims:	N/A
	• For natural perils:	N/A



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
8.9	Principal's option to insure public liability	
8.9.1	Where required (see 8.1 above), the Principal shall effect public liability insurance for an amount not less than:	(\$) N/A
	The lead insurer is:	N/A
	Address of lead insurer:	N/A
	The Nominal Deductible is:	N/A
	In accordance with 8.7.2:	
	<ul style="list-style-type: none"> the policy wording title is: 	N/A
	<ul style="list-style-type: none"> extraordinary exclusions, conditions, warranties, or endorsements to the policy are: 	N/A
8.9.2	Such public liability insurance may include sub-limits for: <i>(specify as applicable or state 'not applicable')</i>	
	<ul style="list-style-type: none"> Liability arising out of vibration, weakening or removal of support: 	(\$) N/A
9	VARIATIONS	
9.3	Valuation of Variations	
9.3.9	For On-site Overheads:	<i>(select one to apply, (a) or (b))</i>
	(a) The prices and rates in the Schedule of Prices are inclusive of full allowance for On-site Overheads;	<input checked="" type="checkbox"/>
	(b) The prices and rates in the Schedule of Prices are exclusive of On-site Overheads and the allowance for On-site Overheads to be added in accordance with 9.3.9 is:	<input type="checkbox"/> <i>(select one to apply, (i), (ii), (iii), or (iv))</i>
	(i) Agreed percentage:	<input type="checkbox"/> N/A (%)
	(ii) As nominated in the Schedule of Prices;	<input type="checkbox"/>
	(iii) As nominated in the Contractor's tender;	<input type="checkbox"/>
	(iv) A reasonable percentage.	<input type="checkbox"/>



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
9.3.10	For Off-site Overheads and Profit: (a) The prices and rates in the Schedule of Prices are inclusive of full allowance for Off-site Overheads and Profit; (b) The prices and rates in the Schedule of Prices are exclusive of Off-site Overheads and Profit and the allowance for Off-site Overheads and Profit to be added in accordance with 9.3.10 is: (i) Agreed percentage: (ii) As nominated in the Schedule of Prices; (iii) As nominated in the Contractor’s tender; (iv) A reasonable percentage.	(select one to apply, (a) or (b)) <input checked="" type="checkbox"/> <input type="checkbox"/> (select one to apply, (i), (ii), (iii), or (iv)) <input type="checkbox"/> N/A (%) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9.3.11	For time-related Cost, the Working Day rate in compensation for time-related On-site Overheads and Off-site Overheads and Profit in relation to an extension of time to be applied in accordance with 9.3.11 is: (a) Agreed rate per Working Day: (b) As nominated in the Schedule of Prices; (c) As nominated in the Contractor’s tender; (d) Reasonable compensation.	(select one to apply, (a), (b), (c), or (d)) <input type="checkbox"/> (\$) N/A <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
9.3.15	For processing of Variations, the percentage to be paid in accordance with 9.3.15 is: (a) Agreed percentage: (b) As nominated in the Schedule of Prices; (c) As nominated in the Contractor’s Tender; (d) The reasonable Cost of processing Variations.	(select one to apply, (a), (b), (c), or (d)) <input checked="" type="checkbox"/> 0 (%) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
10.	TIME FOR COMPLETION	
10.2	Due Date for Completion	
10.2.1	The periods to be used for calculating the Due Date for Completion are: (a) For the Contract Works: (b) For any Separable Portions:	 120 (Working Days) N/A (Working Days)



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
10.4	Practical Completion Certificate	
10.4.5	Prior to issue of the Practical Completion Certificate:	<i>(Select one to apply, (a), (b), or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> Click to add reference
	(c) Producer Statements are not required.	<input type="checkbox"/>
10.5	Damages for late completion	
10.5.1	Liquidated damages shall be applied as follows:	
	• In respect of the Contract Works:	\$ 2,000 <i>(\$ per Working Day)</i>
	• In respect of any Separable Portion(s):	N/A <i>(\$ per Working Day for each Separable Portion)</i>
10.6	Bonus for early completion	
10.6.1	Is a bonus to be payable?	No
	• If yes, the bonus for the Contract Works is:	N/A <i>(\$ per Working Day)</i>
	• If yes, bonuses for any Separable Portions are:	N/A <i>(\$ per Working Day)</i>
11.	DEFECTS LIABILITY	
11.1	Defects Notification Period	
	The Defects Notification Period shall be: (3 Months unless otherwise stated)	
	• For the Contract Works:	12 Months
	• For any Separable Portions:	N/A
11.3	Final Completion Certificate	
11.3.2	Prior to issue of the Final Completion Certificate:	<i>(select one to apply, (a), (b), or (c))</i>
	(a) Producer Statements in the form of Schedule 6 are required;	<input checked="" type="checkbox"/>
	(b) Producer Statements as set out in the following parts of the Contract are required:	<input type="checkbox"/> Click to add reference
	(c) Producer Statements are not required.	<input type="checkbox"/>



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
11.5	Warranties	
11.5.1		<i>(select one to apply, (a) or (b))</i>
	(a) No warranties are required;	<input checked="" type="checkbox"/>
	(b) The Contractor shall provide warranties as set out in the Contract for the following items of work:	<input type="checkbox"/> Click to state items
11.6	Guarantees	
11.6.1,		<i>(select one to apply, (a) or (b))</i>
11.6.2	(a) No guarantees are required;	<input checked="" type="checkbox"/>
	(b) The Contractor shall provide guarantees in the following form:	<input type="checkbox"/> Click to state form
12.	PAYMENTS	
12.1	Contractor's payment claims	
12.1.3(b)	Advances for Materials delivered to the Site	<i>(select one to apply, (a) or (b))</i>
(iii)	(a) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Materials delivered to the Site but which have yet to be incorporated in the Contract Works shall be made, subject to the following conditions:	<input type="checkbox"/> Click to state any conditions
12.1.3(b)	Advances for Temporary Works or Plant	<i>(select one to apply, (a) or (b))</i>
(iv)	(a) Advances for Temporary Works or Plant shall not be made;	<input checked="" type="checkbox"/>
	(b) Advances for Temporary Works or Plant shall be made, subject to the following conditions:	<input type="checkbox"/> Click to state any conditions



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
12.1.3(b) (iv)	Advances for Materials not yet on Site (a) Advances for Materials not on Site shall not be made; (b) Advances for Materials not yet on Site shall be made, subject to the following conditions:	<i>(select one to apply, (a) or (b))</i> <input type="checkbox"/> <input checked="" type="checkbox"/> 30% of the Contract Price
12.3	Retention monies	
12.3.1, 12.3.2	The percentage to be retained from each progress payment and the limit of the total sums retained shall be in accordance with the following:	<i>(select one to apply, (a) or (b))</i>
	(a) For the Contract Works, a total retention of: <ul style="list-style-type: none"> • 10% on the first \$200,000, and • 5% on the next \$800,000, and • 1.75% on amounts in excess of \$1,000,000, and • With a maximum total retention when aggregated of \$200,000, and • With a defects liability retention of half the total retention. 	<input type="checkbox"/>
	(b) The retention scale in the right hand column:	<input checked="" type="checkbox"/> For the Contract Works, a total retention of: <ul style="list-style-type: none"> • 10% of the Contract price • With a defects liability retention of half the total retention.
12.3.3	Bond in lieu of retention	<i>(select one to apply, (a) or (b))</i>
	(a) The Contractor may provide a bond in lieu of retentions;	<input type="checkbox"/>
	(b) The Contractor may not provide a bond in lieu of retentions.	<input checked="" type="checkbox"/>
12.8	Cost fluctuations	<i>(select one to apply, (a), (b), or (c))</i>
	(a) Cost fluctuations shall not be paid;	<input checked="" type="checkbox"/>
	(b) Cost fluctuations shall be paid in accordance with Appendix A;	<input type="checkbox"/>
	(c) Cost fluctuations shall be paid in accordance with the method described in:	<input type="checkbox"/> Click to add reference



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
12.13	Goods and services tax	
12.13.2	Payment Schedules provided by the Engineer:	<i>(select one to apply, (a) or (b))</i>
	(a) Shall not be in the form of a tax invoice;	<input checked="" type="checkbox"/>
	(b) Shall be in the form of a buyer created tax invoice and the parties agree not to issue any other tax invoice for items covered by the Payment Schedule.	<input type="checkbox"/>
13.	DISPUTES	
13.4	Arbitration	
13.4.3	If required, the arbitrator shall be nominated by the following:	the High Court of the Cook Islands
15.	SERVICE OF NOTICES	
15.1.2	For the purpose of service of written notice:	
	(a) The address of the Principal is:	
	Postal address:	Infrastructure Cook Islands P.O. Box 102, Arorangi, Rarotonga, Cook Islands
	Delivery address:	Infrastructure Cook Island Main Road, Arorangi, Rarotonga, Cook Islands
	Mark for the attention of:	Tenga Mana
	Email address:	tenga.mana@cookislands.gov.ck
	Other agreed means of electronic communication and address detail:	N/A
	(b) The address of the Contractor is:	
	Postal address:	Click to enter text
	Delivery address:	Click to enter text
	Mark for the attention of:	Click to enter text
	Email address:	Click to enter text
	Other agreed means of electronic communication and address detail:	Click to enter text



Clause <i>in General Conditions</i>	Title and subject matter	Specific condition data <i>(Expand cells if required or add a reference to further detail provided in Schedule 2.)</i>
	(c) The address of the Engineer is:	
	Postal address:	P.O. Box 102, Arorangi, Rarotonga, Cook Islands
	Delivery address:	Main Road, Arorangi, Rarotonga, Cook Islands
	Mark for the attention of:	Tenga Mana
	Email address:	tenga.mana@cookislands.gov.ck
	Other agreed means of electronic communication and address detail:	N/A



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 2 – Special Conditions of Contract – Other Conditions of Contract

The General Conditions of Contract, NZS 3910:2013 Conditions of Contract for Building and Civil Engineering Construction, are amended as set out herein.

Clause numbers refer to the General Conditions, or additional clause numbers.

1 INTERPRETATION

Delete clause 1.1 and replace as follows:

1.1 Application

This Contract applies within the Cook Islands context. All references to New Zealand context and laws must be construed to the Cook Islands equivalent where applicable. This section shall apply to the Contract except where inconsistent with the context.

1.2 Definitions

Delete GST Invoice and replace as follows:

VAT Invoice A tax invoice for the purposes of the Value Added Tax Act 1997. All references to GST are to be replaced by VAT.

Delete the following definitions:

Adjudication

Adjudicator's Determination

Add the following new definitions:

Force Majeure' means an exceptional event or circumstance not attributable to the actions of either party, the effect of which:

- (a) Is beyond a party's control;
- (b) Could not reasonably have been provided against before entering into the Contract; and
- (c) Once arising could not reasonably have been avoided or overcome.

Probity Event means

- (a) where the principal considers that an inducement or reward has been offered or provided to any employee, agent or representative of the Principal y or on behalf of the Contractor in return for showing or not showing disfavour to any person in relation to this contract; or
- (b) Committing any offence under any laws creating offences in respect of fraudulent acts; or



- (c) Defrauding or attempting to defraud or conspiring to defraud the Principal; or
- (d) An event, matter or thing for which the contractor is responsible that in the opinion of the Principal is or is likely to have adverse effect on the reputation of the Principal

1.4 Law, currency, and language

Delete clause 1.4.1 and replace as follows:

- 1.4.1** The Contract shall be governed by Cook Islands law.

Delete clause 1.4.2 and replace as follows:

- 1.4.2** All prices and payments made under the Contract shall be in New Zealand currency and payable in the Cook Islands. All prices and rates are stated exclusive of VAT, which is to be added and paid where appropriate.

2 THE CONTRACT

2.7 Documents prepared by the Engineer or Principal

Delete clause 2.7.3 and replace as follows:

- 2.7.3.** The General Conditions shall not be varied or modified by the Drawings or the Specifications or the Schedule of Prices unless the change is described in, or clearly identified by reference in, the Special Conditions, or by an express provision in any correspondence which has been identified as a Contract document. The Contract shall be taken as mutually explanatory. Ambiguities or omissions shall not invalidate the Contract. In the event of ambiguity or conflict between any of the documents comprising the Contract, the order of precedence of the Contract documents shall be as stated in the Contract Agreement.

Add the following new clause 2.7.8:

- 2.7.8** Where the Contractor regards the receipt of an instruction as urgent, it shall notify the Engineer and specify a reasonable time within which the instruction must be received.

Add the following new clause 2.7.9:

- 2.7.9** The Contractor must keep full records and documentation in relation to the Contract Works and this Contract. On request by the Principal the Contractor must immediately provide all documents and records relating to the Contract Works and this Contract within the Contractor's possession or control to the Principal for inspection or audit.

3 BONDS

3.1 Contractor's Bond

Add the following new clause 3.1.11:

- 3.1.11** In the event that the Surety pays the Principal the "cash sum" (as defined in Schedule 3), the following shall apply:
- (a) Cash sum shall replace the Contractor's Bond (a) and references to the Contractor's Bond in this Contract shall be read accordingly;
 - (b) The Principal is entitled to draw upon the cash sum on the same basis that the Principal may call up the Contractor's Bond under this Contract;
 - (c) The Principal shall release the cash sum to the Contractor on the same basis that the Principal is required to release the Contractor's Bond under this Contract;



- (d) The Principal may retain the benefit of any interest earned on the cash sum (or part thereof) on or before the date on which it is payable to the Contractor under this Contract.

4. SUBCONTRACTS

4.1 General

Delete clause 4.1.3 and replace as follows:

- 4.1.3** The subcontracting of any of the Contract Works shall not relieve the Contractor from any liability or obligation under the Contract. The Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor or Subcontractor's agents, employees or consultants as fully as if they were the acts, defaults and neglects of the Contractor or the Contractor's agents, employees or consultants.

5 GENERAL OBLIGATIONS

5.3 Control of employees

Number the existing clause "5.3.1" and add new clause 5.3.2

- 5.3.1** The Engineer may object to and direct the Contractor to remove from the Contract Works any employee of the Contractor or of a Subcontractor in or about the execution of the Contract Works who by reason of serious misconduct, incompetence, or negligence in the proper performance of his or her duties is a danger to safety or welfare. An employee required to be removed shall not again be employed upon the Contract Works without the permission of the Engineer.
- 5.3.2** The Contractor must employ the key personnel named in the Special Conditions in the positions nominated in the Contractor's tender or in the Special Conditions. The Contractor shall not remove any such key personnel from their stated position without the prior written consent of the Engineer whose consent shall not be unreasonably withheld, provided the Contractor replaces the relevant person with a person of equal or greater experience and ability.

5.8 Setting Out

Delete clause 5.8.1 and replace as follows:

- 5.8.1** The Contractor shall be responsible for the setting out of the Contract Works in accordance with the Contract and the information and instructions issued by the Engineer. The Contractor shall satisfy itself with the accuracy of all information and instructions issued by the Engineer and set out in the Contract Documents in relation to the setting out of the Contract Works.

Delete clause 5.8.5 and replace as follows:

- 5.8.5** If at any time prior to the issue of a Practical Completion Certificate any error shall appear in the position, levels or dimensions of any part of the Contract Works set out by the Contractor, the Contractor, unless otherwise directed by the Engineer, must rectify the error.

The Cost of rectification shall be borne by the Contractor except, and to the extent, that any error arises out of incorrect information supplied by the Principal or by the Engineer, and which was not known or could have been reasonably foreseen by the Contractor to be incorrect, in which case it shall be treated as a Variation".

5.9 Materials, labour and Plant

Delete clause 5.9.2 and replace as follows:



5.9.2 All Materials and workmanship shall conform to the provisions of the Contract. Unless otherwise specified in the Contract, all Materials used other than in Temporary Works shall be new of good quality and fit for their purpose. All work shall be carried out in a tradesman-like manner.

5.11 Compliance with laws

Delete clause 5.11.10 and replace as follows:

5.11.10 If after the Date of Acceptance of Tender, the making of any statute, regulation, or bylaw, or the imposition by Government or by a local authority of any royalty, fee, or toll increases or decreases the Cost to the Contractor of performing the Contract, such increase or decrease not being otherwise provided for in the Contract, and not reasonably foreseeable by an experienced Contractor at the Date of Acceptance of Tender the effect shall be treated as a Variation.

5.21 Advance notification

Delete clause 5.21.1 and replace as follows:

5.21.1 The Contractor and the Engineer shall each notify the other in writing as soon as either of them becomes aware of any matter which is likely to:

- a) Materially alter the Contract Price;
- b) Materially delay completion of the Contract Works; or any Separable Portion;
- c) Result in a breach of a statutory duty in connection with the Contract Works.

6 ENGINEER'S POWERS AND RESPONSIBILITIES

6.2 Role of Engineer

Delete clause 6.2.5 and replace as follows:

6.2.5 No review, inspection, acceptance, or approval by the Engineer or Engineers Representative shall relieve the Contractor of any obligation or liability under the Contract, except in the case of a Variation instructed under 9.1.

6.4 Inspection, recording, measuring, and testing

Add the following new clause 6.4.8:

6.4.8 Review, inspection, approval or permission to proceed by the Engineer or the Engineer's Representative does not relieve the Contractor from full compliance with its contractual or legal obligations.

8 INSURANCE

8.1 General

Delete clause 8.1.3 and replace as follows:

8.1.3 The Contractor and the Principal shall comply with all warranties and conditions of the policy and shall not engage in any practice or activity which could void the insurance cover. The Principal's obligation to comply with this clause is limited to such warranties and conditions as have been notified to the Principal by the Contractor.

8.2 Contractor arranged insurance - General

Delete clause 8.2.3 and replace as follows:

8.2.3 The insurances required under 8.3, 8.4, and 8.5 shall provide that:



- a) In the event of a claim being made and accepted, the amount of the cover shall be reinstated to the full cover required by the Contract;
- b) Where the insurances are required to be in the joint names of the Contractor and the Principal, each of them is severally insured, such that the insurance shall apply to them as separate insured's.
- c) The actions of one insured shall not affect the rights of any other insured; and
- d) The policies are primary and without contribution from any policy of insurances effected by the Principal.

8.3 Contractor arranged construction insurance

Delete clause 8.3.1 and replace as follows:

- 8.3.1** Where the Contractor is identified in the Special Conditions as being the party responsible to effect construction insurance, without limiting its obligations under 5.6 and 7.1, the Contractor shall, in the name of the Principal and the Contractor effect construction insurance of the Contract Works (including Temporary Works) and the Materials which are in the care or possession of the Contractor within Cook Island or in transit from elsewhere in the Cook Islands.

8.5 Contractor arranged public liability insurance

Delete clause 8.5.1 and replace as follows:

- 8.5.1** Where the Contractor is identified in the Special Conditions as being the party responsible to effect public liability insurance, the Contractor shall, without limiting its obligations under 5.6 and 7.1, effect public liability insurance in the names of the Principal and the Contractor, for an amount not less than that stated in the Special Conditions, to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss, or injury caused by any act or omission of the Contractor arising out of the performance of the Contract Works. The insurance shall also include cover for:
- a) The Contractor's liability for loss or damage to any existing structures, or other structures in the vicinity and the contents of any of them, that are not specifically identified in Schedule 1 under items 8.8.2 (a), (b) and (c) of the Principal's construction insurance, shall be covered by the Contractor's public liability insurance.
 - b) The Contractor's legal liability arising out of the performance of the Contract Works for damage, loss, or injury to the Principal and to the Principal's property, other than to the Contract Works and existing property to be insured under 8.3 or 8.8.

9 VARIATIONS

9.1 Variations permitted

Delete clause 9.1.1 and replace as follows:

- 9.1.1** The Engineer may order any Variations to the Contract Works within the scope of the Contract that:
- a) Increase or decrease the quantity of any work;
 - b) Omit any work, whether or not any such work omitted is subsequently carried out by a Separate Contractor or by the Principal itself;
 - c) Change the character or quality of any Material or work;
 - d) Require additional work to be done; or
 - e) Change the level, line, position, or dimensions of any part of the Contract Works.

9.2 Variation orders

Delete clause 9.2.1 and replace as follows:

- 9.2.1** The Contractor shall not vary the Contract Works without an order in writing from the Engineer. Any Costs incurred by the Contractor without such written order shall be borne by the Contractor.

Delete clause 9.2.4 and replace as follows:



9.2.4 Within 1 Month of the receipt of notice under 9.2.2 or 9.2.3 or as soon as practicable thereafter, the Engineer shall by notice in writing either confirm that the instruction or matter involves a Variation or disallow a Variation giving reasons for doing so.

9.4 Daywork

Delete clause 9.4.3 and replace as follows:

9.4.3 For all work executed on a Daywork basis, the Contractor shall record on a daily basis during the continuation of the work, in a manner acceptable to the Engineer, the time spent by each worker and each item of Plant, and the quantities of Materials used for the execution of the Daywork. These records shall, if agreed correct, be signed by the Engineer or the Engineer's Representative if possible on a daily basis and shall be the basis of payment. One signed copy shall be submitted with the Contractor's payment claim and in such case shall be *prima facie* evidence of its content.

9.5 Unforeseen Physical Conditions.

Delete clause 9.5.1 and replace as follows:

9.5.1 The term 'physical conditions' shall include artificial obstructions but shall not include weather conditions or conditions due to weather unless those conditions occur as a result of weather away from the Site. The term physical conditions shall not include underground services or other utilities to which clause 5.13 shall apply.

10 TIME FOR COMPLETION

10.3 Extension of time

Delete clause 10.3.1 and replace as follows:

10.3.1 The Engineer shall grant an extension of the time for completion of the Contract Works or for any Separable Portion if the Contractor is fairly entitled to an extension by reason of (no extension of time will be granted unless the delay has affected the critical path of the Contract Works such that Practical Completion cannot be achieved by the Due Date for Completion):

- a) The net effect of any Variation;
- b) Weather sufficiently inclement to interfere with the progress of the works;
- c) Any strike, lockout, or other industrial action except where caused or to the extent contributed to by the Contractor or its Subcontractors;
- d) Loss or damage to the Contract Works or Materials other than loss or damage caused by any act or omission of the Contractor or of any person for whose acts or omissions the Contractor is as between itself and the Principal responsible;
- e) Flood, volcanic, or seismic events;
- f) Any circumstances not reasonably foreseeable by an experienced contractor at the time of tendering and not due to the fault of the Contractor; or
- g) Act or omission by the Principal, or any other Person for whose acts or omissions the Principal is responsible, which is not a Variation.

Add the following new clause 10.3.8:

10.3.8 Where there has been a delay to the Contract Works which does not entitle the Contractor to an extension of time pursuant to clause 10.3.1, the Engineer may require the Contractor to expedite progress at its own cost by applying additional resources or working longer hours or in whatever other manner he may require.

10.4 Practical Completion Certificate



Delete clause 10.4.5 and replace as follows:

10.4.5 If required by the Special Conditions, prior to the Engineer issuing a Practical Completion Certificate, the Contractor shall provide to the Engineer:

- a) Producer Statements in the form set out in Schedule 6 or other form(s) as noted in the Special Conditions;
- b) As-built drawings and operation and maintenance manuals required under 5.20.1 in draft form in accordance with 5.20.3(a); and
- c) Anything else required by the Special Conditions.

11 DEFECTS LIABILITY

11.3 Final Completion Certificate

Delete clause 11.3.2 and replace as follows:

11.3.2 If required by the Special Conditions, prior to the Engineer issuing a Final Completion Certificate the Contractor shall provide to the Engineer:

- a) Producer Statements in the form set out in Schedule 6, or other form(s) as noted in the Special Conditions;
- b) As-built drawings and operation and maintenance manuals required under 5.20.1 in final form in accordance with 5.20; and
- c) Anything else required by the Special Conditions.

12 PAYMENTS

12.1 Contractor's payment claims

Delete clause 12.1.3 and replace as follows:

12.1.3 The Contractor's payment claims shall:

- a) Identify the Contract and the relevant period to which the payment claim relates;
- b) Identify the Contract Works to which the payment claim relates, the claimed amount in respect of those Contract Works and the manner in which the claimed amount has been calculated, in particular:
 - (i) The estimated extent and value of the Contract Works which has been carried out, excluding Variations
 - (ii) The estimated extent and value of all work done or other Cost which is claimed for Variations
 - (iii) Where provided for in the Special Conditions, and subject to the conditions stated in the Special Conditions, advances for the estimated value of Materials delivered to the Site which are intended to be incorporated in the Contract Works but have not yet been so incorporated
 - (iv) Any advances for Temporary Works or Plant or for Materials not yet on Site for which payment is provided in the Special Conditions, subject to the conditions stated in the Special Conditions. The conditions may, in the case of Materials not yet on Site, include the execution of an agreement in the form set out in Schedule 14 or other appropriate form
 - (v) The estimated value of Cost fluctuations for which payment is provided under 12.8, and
 - (vi) The estimated amount of any bonus to which the Contractor claims to be entitled under 10.6;
- c) Indicate the due date for payment which shall be 17 Working Days after the date of service of the payment claim.

Add the following new clause 12.1.4:

12.1.4 The Contractor must comply with the following requirements before submitting a claim for payment under the Contract:

- a) Sign the Contract Documents;



- b) Provide evidence that the insurance policies required of it are in place to the satisfaction of the Principal;
- c) Provide the bonds required under the Contract;
- d) Provide any guarantees and/or warranties required under the Contract;

12.3 Retention monies

Delete clause 12.3.2 and replace as follows:

12.3.2 The monies retained, less any deductions which the Principal is entitled to make, shall be paid to the Contractor as follows:

- a) By payment, as part of the first progress payment after the issue of the Practical Completion Certificate for the whole of the Contract Works or for the Separable Portion, of any amount in excess of the defects liability retention specified in the Special Conditions less the Engineer's assessment of the value of any Contract Works remaining to be completed other than minor omissions and minor defects under 10.4.1;
- b) By payment, as part of the first and any subsequent progress payment after the end of the Defects Notification Period for the whole of the Contract Works or for the Separable Portion, of the defects liability retention less the Engineer's assessment of the value of the Contract Works remaining to be completed in accordance with 11.2 at the time of the progress payment. The assessed value of such remaining Contract Works shall be the assessed Cost to the Principal of making good those omissions and defects in accordance with 11.2.2 and 11.2.3; and
- c) By payment of any remaining defects liability retention 10 Working Days after the date of the Final Completion Certificate for the whole of the Contract Works or of the Separable Portion.

12.4 Final payment claim

Delete clause 12.4.2 and replace as follows:

12.4.2 The final payment claim shall:

- a) Identify the Contract and the relevant period or periods to which the final payment claim relates, which shall cover the period up until completion of all of the Contractor's obligations under the Contract;
- b) Identify the work to which the final payment claim relates (which shall include all Contract Works yet to be completed by the Contractor or paid for by the Principal);
- c) Show the claimed amount in respect of that work, the amount or amounts claimed by the Contractor in respect of all outstanding claims, and the manner in which all such sums have been calculated; and
- d) Indicate the due date for payment which, subject to 12.5.6, shall be 45 Working Days after the date of service of the final payment claim.

Delete clause 12.4.3 and replace as follows:

12.4.3 Submission of the final payment claim by the Contractor shall be conclusive evidence that the Contractor has no outstanding claim against the Principal other than as contained therein, except for any item which has been referred to arbitration under Section 13. The Principal shall not be liable to the Contractor for any matter in connection with the Contract unless contained within the final payment claim but this shall not preclude the later correction of any clerical or accounting error.

12.6 Effect of Final Payment Schedule

Add the following new clause 12.6.2:



12.6.2 Notwithstanding the issue of the Final Payment Schedule the Contractor shall remain liable for fulfilment of any obligation of the Contractor under the Contract which then remains unperformed or not properly performed.

12.7 Interest

Delete clause 12.7.3 and replace as follows:

12.7.3 In the event of unreasonable deduction of any amount from any Contractor's payment claim or final payment claim being made in any Payment Schedule, and where such amount is later paid by the Principal, the Contractor shall be entitled to interest compounding Monthly on that amount from the date on which it would have been payable if the unreasonable deduction had not occurred down to the date of payment

12.13 Goods and services tax

Delete clauses 12.13.1 and replace as follows:

12.13.1 Clause 12.13 shall only apply where both the Principal and the Contractor are registered under the Value Added Tax Act.

Delete clauses 12.13.12 and replace as follows:

12.13.2 Any payment claim or final payment claim prepared by the Contractor shall not be a VAT invoice. Unless stated otherwise in the Special Conditions, when the Engineer provides Progress Payment Schedules under 12.2 or Final Payment Schedules under 12.5, he or she shall on behalf of the Principal ensure that the Payment Schedules are in the form required to constitute a VAT invoice.

13 DISPUTES

13.1 General

Delete clause 13.1.1 and replace with:

13.1.1 No decision, valuation, or certificate of the Engineer shall be questioned or challenged more than 3 Months after it has been given unless notice has been given to the Engineer within that time. Every decision, valuation, or certificate of the Engineer shall be final and binding if neither party has referred it to the Engineer under 13.2.1 within 3 Months after it has been given, unless notice has been given to the Engineer within that time. This subclause 13.1.1 shall not apply to a Progress Payment Schedule.

Delete clause 13.1.3

13.2 Engineer's review

Delete clause 13.2.1 and replace with:

13.2.1 Every dispute or difference under 13.1.2 shall be referred to the Engineer not later than 1 Month after the provision of the Final Payment Schedule under 12.5.1, 12.5.3, or 12.5.4. The Engineer shall give his or her decision in writing. Except in the case of a decision under 13.2.4 the Engineer may correct or modify his or her decision by a subsequent decision in writing.

Delete clause 13.2.4 and replace with:

13.2.4 Unless the dispute or any question arising in connection with it has been referred under 13.2.3 and is awaiting a recommendation from the agreed expert, the Engineer may, at any time, in respect of any dispute or difference under 13.2.1 give a decision (in this Section called 'a formal decision') which states expressly that it is given under this subclause 13.2.4. The Engineer shall give a formal decision on the matter within 20 Working Days of receiving notice in writing from the Principal or the Contractor requiring him or her to give a formal decision and expressly referring to this subclause



13.2.4. Upon making a formal decision the Engineer shall forthwith send copies of it to both the Principal and the Contractor. The Engineer's formal decision shall, subject to 13.3 and 13.4, be final and binding.

13.4 Arbitration

Delete clause 13.4.2 and replace as follows:

13.4.2 A notice requiring arbitration shall be in writing and shall be given by the Principal or the Contractor to the other of them:

- (a) Within 1 Month after the Engineer's formal decision under 13.2.4 or after the time prescribed for the giving of the Engineer's formal decision, whichever shall be the earlier; or
- (b) Within 1 Month after the happening of the event described in 13.3.5 which gives rise to the right to arbitration.

Delete clause 13.4.4 and replace as follows:

13.4.4 The arbitrator shall have full power to open up, review, and revise any decision, opinion, instruction, direction, certificate, or valuation of the Engineer or any Payment Schedule and to award upon all questions referred to him or her. Neither party to the arbitration shall be limited to the evidence or arguments put before the Engineer for his or her review or put before a mediator or included in any payment claim or Payment Schedule.

13.5 Suspension during dispute

Delete clause 13.5.3

15 SERVICE OF NOTICES

Delete clause 15.1.4 and replace as follows:

15.1.4 Every notice to the Principal shall be sufficiently given if it is given to the Engineer, except notice under 13.3, 13.4, or 14.3.3.

16 MISCELLANEOUS

Add the following new clause 16.1:

16.1 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the contract or the Contract Works in any media without the prior written approval of the Principal. The Contractor shall refer to the Principal any enquiries concerning the contract or the Contract Works from any media or member of the public.

Add the following new clause 16.2:

16.2 Force Majeure

16.2.1 If either party is prevented from performing any or part of its obligations under the Contract by a Force Majeure, then it shall give written notice to the other party within 10 Working Days of the Force Majeure occurring.

16.2.2 A party giving notice under 16.2.1 shall:

- a) be entitled to suspend performance of such obligations for so long as such Force Majeure prevents it from performing them; and
- b) Shall minimise any delay to the performance of such obligations under the Contract as a result of the Force Majeure.



- 16.2.3** Any suspension under this 16.2 shall be treated as circumstances not reasonably foreseeable to an experienced Contractor under 10.3.1(f), but not a Variation.
- 16.2.4** Suspension under this clause 16.2 shall not be regarded as suspension by the Engineer under 6.7. However, the Contractor shall be obliged to comply with the obligations set out in 6.7.2.
- 16.2.5** In the event that:
- a) The whole of the Contractor's obligations are suspended under 16.2.2; or
 - b) The Contract Works are materially damaged by an excepted risk or Force Majeure, the Principal may terminate the Contract by giving not less than five Working Days' notice in writing to the Contractor.
- 16.2.6** In the event that the whole of the Contract Works are suspended under 16.2.2 for a continuous period of 6 months, the Contractor may terminate the Contract by giving not less than 10 Working Days' notice in writing to the Principal.
- 16.2.7** In the event of termination by the Principal under 16.2.5 or termination by the Contractor under 16.2.6, the Contractor shall be entitled to be paid a sum calculated in accordance with 14.1.2.



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 3 – Form of Contractor’s performance bond

Contract for [Click to enter text](#)

THIS DEED
is made on [Click to enter a date](#)

BY [Click to enter text](#)

of [Click to enter text](#) (‘the Contractor’)

AND [Click to enter text](#)

of [Click to enter text](#) (‘the surety’)

[Click to enter text](#) (Address of surety for service)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A** The Contractor has entered into an agreement with [Click to enter text](#) of [Click to enter text](#) (‘the Principal’) to carry out and fulfil the obligations imposed on the Contractor (‘the Contract’).
- B** The Contract requires the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor’s obligations under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED:

- 1. THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ [Click to enter amount](#) and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. THE** conditions of this bond are that it shall be released if and when:
 - (a) A Practical Completion Certificate has been issued for the Contract Works in accordance with 10.4 of the General Conditions;
 - (b) The surety receives a notice from the Principal releasing the Contractor and surety from this bond; or
 - (c) The surety receives a notice from the Principal confirming that a replacement Contractor’s Bond has been received and accepted and releasing the Contractor and surety from this bond.
- 3. EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. THE** surety shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the Contract;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
 - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
 - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor’s obligations or in respect of any default on the part of the Contractor.
- 5. THIS** bond shall be governed by Cook Island law.



In witness of which this deed has been executed.

SIGNED on behalf of the surety by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

SIGNED on behalf of the Contractor by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

NOTE – This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 4 – Form of Principal’s bond

Contract for [Click to enter text](#)

THIS DEED
is made on [Click to enter a date](#)

BY [Click to enter text](#)

of [Click to enter text](#) (‘the Principal’)

AND [Click to enter text](#)

of [Click to enter text](#) (‘the surety’)

[Click to enter text](#) (Address of surety for service)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** The Principal has entered into an agreement with [Click to enter text](#) of [Click to enter text](#) (‘the Contractor’) by which the Contractor has agreed to carry out and fulfil the obligations imposed on the Contractor (‘the Contract’).
- B** The Contract requires the Principal to provide the Contractor with security in the form of a bond to ensure performance of the Principal’s obligations under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED

1. **THE** Principal and surety are jointly and severally held and bound to the Contractor in the sum of \$NZ [Click to enter amount](#) and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
2. **THE** conditions of this bond are that it shall be released if and when:
 - (a) The Principal has paid to the Contractor the Contract Price and any other monies payable to the Contractor under the Contract; or
 - (b) The surety receives a notice from the Contractor releasing the Principal and the surety from this bond.
3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
4. **THE** surety shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the Contract;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
 - (c) By any allowance of time by the Contractor; or
 - (d) By any forbearance or waiver by the Contractor in respect of any of the Principal’s obligations or in respect of any default on the part of the Principal.
5. **THIS** bond shall be governed by Cook Islands law.



In witness of which this deed has been executed.

SIGNED on behalf of the surety by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

SIGNED on behalf of the Principal by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

NOTE – This bond shall be executed by the Principal and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 5 – Form of Contractor’s bond in lieu of retentions

Contract for [Click to enter text](#)

THIS DEED
is made on [Click to enter a date](#)

BY [Click to enter text](#)

of [Click to enter text](#) (‘the Contractor’)

AND [Click to enter text](#)

of [Click to enter text](#) (‘the surety’)

[Click to enter text](#) (Address of surety for service)

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** The Contractor has entered into an agreement with [Click to enter text](#) of [Click to enter text](#) (‘the Principal’) to carry out and fulfil the obligations imposed on the Contractor (‘the Contract’).
- B** The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract.
- C** Words and phrases with capital initial letters that are not otherwise defined in this bond shall have the meaning set out in the Contract.

BY THIS DEED

1. **THE** Contractor and surety are jointly and severally held and bound to the Principal in the sum of \$NZ [Click to enter amount](#) and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
2. **THE** conditions of this bond are that it shall be released if and when:
 - (a) The Final Completion Certificate has been issued for the Contract Works in accordance with 11.3 of the General Conditions; or
 - (b) The surety receives a notice from the Principal releasing the Contractor and the surety from this bond.
3. **EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
4. **THE** surety shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the Contract;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered, and having defects remedied;
 - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract; or
 - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor’s obligations or in respect of any default on the part of the Contractor.
5. **THIS** bond shall be governed by Cook Island law.



In witness of which this deed has been executed.

SIGNED on behalf of the surety by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

SIGNED on behalf of the Contractor by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

NOTE – This bond shall be executed by the Contractor and by the surety in the manner required for execution of a deed. Any of these parties which are a company shall execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute in the same manner as a company by persons in a comparable position to a company director. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 6 – Form of Producer Statement – Construction

ISSUED BY	Click to enter text	<i>(Contractor)</i>
TO	Click to enter text	<i>(Principal)</i>
IN RESPECT OF	Click to enter text	<i>(Description of Contract Works)</i>
AT	Click to enter text	<i>(Address)</i>

[Click to enter the Contractor](#) *(Contractor)* has contracted to [Click to enter the Principal](#) *(Principal)* to carry out and complete certain works in accordance with a Contract titled [Click to enter project name](#) ('the Contract')

I [Click to enter name](#) *(Duly Authorised Agent)* a duly authorised representative of [Click to enter text](#) *(Contractor)* believe on reasonable grounds that [Click to enter text](#) *(Contractor)* has carried out and completed:

- All
- Part only as specified in the attached particulars of the contract works in accordance with the Contract
[Click to enter details of attached particulars](#)

[Click to enter text or paste signature](#)

(Signature of Authorised Agent on behalf of)

[Click to enter text](#)

(Contractor)

[Click to enter text](#)

(Address)

Date [Click to enter a date](#)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 7 – Information on Contractor arranged construction insurance

To whom it may concern:

From [Click to enter text](#) *(Name of insurance company)*
[Click to enter text](#) *(Branch)*
[Click to enter text](#) *(Address)*

We confirm having effected construction insurance for:

[Click to enter text](#) *(The Contractor)*
[Click to enter text](#) *(The Principal)*
In respect of [Click to enter text](#) *(Project title)*
Policy wording title is [Click to enter text](#)

The following provisions apply:

- Project specific policy
- Annual run-off policy
- Annual cut-off policy

We advise that special terms, copy attached, have been applied to this policy

[Select yes or no](#)

8.1.6

The following forces of nature are insured:

- | | | |
|--|--|--|
| <input type="checkbox"/> landslip | <input type="checkbox"/> earthquake | <input type="checkbox"/> tsunami |
| <input type="checkbox"/> tornado | <input type="checkbox"/> cyclone | <input type="checkbox"/> storm |
| <input type="checkbox"/> flood | <input type="checkbox"/> lightning strike | <input type="checkbox"/> volcanic activity |
| <input type="checkbox"/> hydrothermal activity | <input type="checkbox"/> geothermal activity | |



8.3.3

The sums insured are (VAT exclusive):

Contract Price		\$	Click to enter amount
(a) Costs of demolition		\$	Click to enter amount
(b) Professional fees		\$	Click to enter amount
(c) Value of items to be incorporated		\$	Click to enter amount
(d) An allowance for an increase in construction costs		\$	Click to enter amount
(e) An allowance for increased reconstruction costs		\$	Click to enter amount
TOTAL SUM INSURED		\$	Click to enter amount

The policy deductibles are (VAT inclusive):

Non-earthquake		\$	Click to enter amount
Natural disaster	Click to enter % % of Click to enter text minimum of	\$	Click to enter amount
Other (name)	Click to enter text	\$	Click to enter amount

8.2.3(a)

Construction period	from	Click to enter a date	to	Click to enter a date
Insurance maintenance period		Click to enter text		
Policy expiry date		Click to enter a date		

Policy cover terms included are:

8.2.2	Discretionary cancellation clause	Select yes or no
8.2.3	Reinstatement provision on building and contents	Select yes or no
8.2.3	Severally insured	Select yes or no
	No settlement delay due to exercise of subrogation	Select yes or no
8.2.4	Void <i>ab initio</i> for non-payment of premium without prior notification	Select yes or no

Policy extensions included are:

			Sub-limit (if applicable)
8.3.1	Transit (in Cook Islands)	Select yes or no	\$ Click to enter amount
8.3.1	Materials in storage (in Cook Islands)	Select yes or no	\$ Click to enter amount
	Testing and commissioning	Select yes or no	\$ Click to enter amount
	Expediting expenses	Select yes or no	\$ Click to enter amount
	Overseas airfreight	Select yes or no	\$ Click to enter amount

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp [Click to enter text](#)

Date [Click to enter a date](#)



(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 8 – Information on Contractor arranged Plant insurance

To whom it may concern:

From [Click to enter text](#) *(Name of insurance company)*
[Click to enter text](#) *(Branch)*
[Click to enter text](#) *(Address)*

We confirm having effected Plant insurance for:

[Click to enter text](#) *(The Contractor)*
In respect of [Click to enter text](#) *(Project title)*
Policy wording title is [Click to enter text](#)

We advise that special terms, copy attached, have been applied to this policy

[Select yes or no](#)

The following provisions apply:

- Annual policy
 Project specific policy

Policy expiry date [Click to enter a date](#)

8.4

The sums insured are (VAT exclusive):

- All items of Plant Sum insured \$ [Click to enter amount](#)
OR
 Valued schedule of construction Plant insured (copy attached)

The policy deductible (VAT inclusive) is:

\$ [Click to enter amount](#)

Policy cover terms included are:

- 8.2.2** Discretionary cancellation clause [Select yes or no](#)
8.2.3(a) Reinstatement provision [Select yes or no](#)
8.2.4 Void *ab initio* for non-payment of premium without prior notification [Select yes or no](#)
No settlement delay due to exercise of subrogation [Select yes or no](#)

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.



Insurance Company Stamp [Click to enter text](#)

Date [Click to enter a date](#)

(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 9 – Information on public liability insurance

To whom it may concern:

From [Click to enter text](#) *(Name of insurance company)*
[Click to enter text](#) *(Branch)*
[Click to enter text](#) *(Address)*

We confirm having effected public liability insurance to indemnify the Principal and the Contractor against legal liability to third parties for damage, loss or injury caused by an act or omission of the Contractor arising out of the performance of the Contract Works.

[Click to enter text](#) *(The Contractor)*
[Click to enter text](#) *(The Principal)*
 In respect of [Click to enter text](#) *(Project title)*
 Policy wording title is [Click to enter text](#)

We advise that special terms, copy attached, have been specifically applied to this project [Select yes or no](#)

The following provisions apply:

- Annual policy
- Project specific policy

Policy expiry date [Click to enter a date](#)

8.5, 8.9

The limit of indemnity (VAT exclusive)	\$	<u>Click to enter amount</u>
Sub-limit insured for (VAT exclusive)		
Vibration, removal, or weakening of support	\$	<u>Click to enter amount</u>
Underground services	\$	<u>Click to enter amount</u>
Deductible (VAT inclusive) is	\$	<u>Click to enter amount</u>
Deductible for vibration, removal, or weakening of support (VAT inclusive)	\$	<u>Click to enter amount</u>
Deductible for underground services (VAT inclusive)	\$	<u>Click to enter amount</u>



The policy also covers liability arising out of:

- The ownership/use of Plant not required to be registered for road use [Select yes or no](#)
- The use of hired Plant [Select yes or no](#)
- The ownership/use of watercraft over 8 m [Select yes or no](#)
- The ownership/use of aircraft [Select yes or no](#)
- The use of explosives [Select yes or no](#)

8.2, 8.7

Policy cover terms included are:

- Reinstatement provisions [Select yes or no](#)
- Number of reinstatements [Click to enter number](#)
- Discretionary cancellation clause [Select yes or no](#)
- Void *ab intio* for non-payment of premium without prior notification [Select yes or no](#)
- Severally insured [Select yes or no](#)
- No settlement delay due to exercise of subrogation [Select yes or no](#)

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp [Click to enter text](#) **Date** [Click to enter a date](#)
(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 10 – Information on Contractor arranged motor vehicle insurance

To whom it may concern:

From Click to enter text *(Name of insurance company)*
Click to enter text *(Branch)*
Click to enter text *(Address)*

We confirm having effected motor fleet insurance for

Click to enter text *(The Contractor)*

In respect of Click to enter text *(Project title)*

Policy wording title is Click to enter text

We advise that special terms, copy attached, have been applied to this policy [Select yes or no](#)

The following provisions apply:

- Annual policy
 Project specific policy

Policy expiry date Click to enter a date

8.5.2

The limits of liability are (VAT exclusive):

Section 2 – Liability \$ Click to enter amount
 For any one occurrence arising out of the same event

The policy deductibles are:

Section 2 – Liability (VAT inclusive) \$ Click to enter amount
 Plus under age penalties

8.2

Policy cover terms included are:

- Section 2 Liability automatic reinstatement [Select yes or no](#)
 Discretionary cancellation clause [Select yes or no](#)
 Void *ab initio* for non-payment of premium without prior notification [Select yes or no](#)
 No settlement delay due to exercise of subrogation [Select yes or no](#)



We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp [Click to enter text](#)

Date [Click to enter a date](#)

(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



Insurance Company Stamp [Click to enter text](#)

Date [Click to enter a date](#)

(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 12 – Information on Principal arranged construction insurance

To whom it may concern:

From [Click to enter text](#) *(Name of insurance company)*
[Click to enter text](#) *(Branch)*
[Click to enter text](#) *(Address)*

We confirm having effected insurance for:

[Click to enter text](#) *(The Principal)*
[Click to enter text](#) *(Covering property at)*
[Click to enter text](#) *(Class of insurance)*
In respect of [Click to enter text](#) *(Project title)*
Policy wording title is [Click to enter text](#)

We advise that special terms, copy attached, have been applied to this policy [Select yes or no](#)

The following provisions apply:

- Material damage/construction project specific policy
- Annual run-off policy
- Annual cut-off policy

Policy expiry date [Click to enter a date](#)

8.1.6

The following forces of nature are insured:

- | | | |
|--|--|--|
| <input type="checkbox"/> landslip | <input type="checkbox"/> earthquake | <input type="checkbox"/> tsunami |
| <input type="checkbox"/> tornado | <input type="checkbox"/> cyclone | <input type="checkbox"/> storm |
| <input type="checkbox"/> flood | <input type="checkbox"/> lightning strike | <input type="checkbox"/> volcanic activity |
| <input type="checkbox"/> hydrothermal activity | <input type="checkbox"/> geothermal activity | |

8.8.4

Construction period from [Click to enter a date](#) to [Click to enter a date](#)
Insurance maintenance period [Click to enter text](#)



8.8.1

This policy has been endorsed to record as an additional insured:

The Contractor [Select yes or no](#)
 Subcontractors [Select yes or no](#)

The sums insured are (VAT exclusive):

8.8.2(a)	Existing structure	\$	Click to enter amount
8.8.2(b)	Other structures in the vicinity	\$	Click to enter amount
8.8.2(c)	Contents	\$	Click to enter amount
8.3.3	Contract Price	\$	Click to enter amount
8.3.3(a)	Costs of demolition	\$	Click to enter amount
8.3.3(b)	Professional fees	\$	Click to enter amount
8.3.3(c)	Value of items to be incorporated	\$	Click to enter amount
8.3.3(d)	An allowance for an increase in construction costs	\$	Click to enter amount
8.3.3(e)	An allowance for increased reconstruction costs	\$	Click to enter amount
	TOTAL SUM INSURED	\$	Click to enter amount

8.1.4	The policy deductibles are (VAT inclusive):	\$	Click to enter amount
	Non-earthquake	\$	Click to enter amount
	Natural disaster Click to enter % % of Click to enter text minimum of	\$	Click to enter amount
	Other (name) Click to enter text	\$	Click to enter amount

Where more than one policy is involved in insuring all of the above items a separate Schedule 12 shall be completed for each policy.

Policy cover terms included are:

8.2.2	Discretionary cancellation clause	Select yes or no
8.2.3	Reinstatement provision on building and contents	Select yes or no
8.2.3	Severally insured	Select yes or no
	No settlement delay due to exercise of subrogation	Select yes or no
8.2.4	Void <i>ab initio</i> for non-payment of premium without prior notification	Select yes or no
8.8.2	Covers damage arising out of the Contract Works	Select yes or no

Policy extensions included are:

Policy extensions included are:			Sub-limit (if applicable)
8.3.1	Transit (in Cook Islands)	Select yes or no	\$ Click to enter amount
8.3.1	Materials in storage (in Cook Islands)	Select yes or no	\$ Click to enter amount
	Testing and commissioning	Select yes or no	\$ Click to enter amount
	Expediting expenses	Select yes or no	\$ Click to enter amount
	Overseas airfreight	Select yes or no	\$ Click to enter amount
	Partial occupation	Select yes or no	\$ Click to enter amount



We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

This insurance issued is subject to the terms and conditions of this policy. We do not warrant that this policy complies with the requirements of NZS 3910:2013.

Insurance Company Stamp [Click to enter text](#) **Date** [Click to enter a date](#)
(Or name of insurance broking company confirming cover)

SIGNED BY [Click to enter text or paste signature](#)

SIGNATORY TITLE [Click to enter text](#)

(Clause numbers refer to NZS 3910:2013 and are for information only.)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 13 – Form of Contractor (or Subcontractor) warranty

THIS AGREEMENT is
made on [Click to enter a date](#) *(insert date)*
BETWEEN [Click to enter text](#) *(‘the Principal’)*
AND [Click to enter text](#) *(‘the Contractor’)*
AND [Click to enter text](#) *(‘the Warrantor’)*

DEFINITIONS

‘Warranted Works’ [Click to enter text](#)
‘Warranty Period’ [Click to enter number](#) years from the date of Practical Completion of the Contract Works

BACKGROUND

- A** The Principal has entered into a contract (the ‘Contract’) with the Contractor for carrying out the Contract Works. The Warranted Works are part of the Contract Works.
- B** The Contractor has agreed to arrange for the provision of a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.
- C** The Warrantor has agreed to provide a warranty in respect of the Warranted Works for the Warranty Period on the terms set out in this warranty.

IT IS HEREBY AGREED

- 1** The Warrantor warrants to the Principal that the Warranted Works are as required in the Contract. If not otherwise specified the works shall be in accordance with good trade practice.
- 2** This warranty shall be in addition to and shall not derogate from any manufacturer’s warranty or any warranty implied by law or the Defects Notification Period in the Contract, attaching to any part of the Warranted Works.

3 Warrantor’s obligations

3.1

The Warrantor agrees that, if within the Warranty Period the Warrantor is advised by the Principal in writing of any defect in the Warranted Works for which the Warrantor is liable under the terms of this warranty, the Warrantor will promptly take steps to remedy the defect.

3.2

Any remedial work which the Warrantor is liable to undertake under this warranty shall be carried out:

- (a) To the standard required by the Contract;
- (b) In a prompt and timely manner;
- (c) Without unnecessary inconvenience to any occupants;
- (d) At the Warrantor’s Cost; and
- (e) Subject to reasonable access being provided to the Warrantor for the purpose of carrying out the remedial work.



3.3

Where the Cost of replacement of work and/or Materials is out of all proportion to the consequences of the defect, or where the defect may not be reasonably capable of rectification without substantial expense which is out of all proportion to the Cost of the Warranted Works:

- (a) If the defect is reasonably able to be rectified by repair rather than by replacement, the Warrantor's obligation under this warranty shall be only to repair or otherwise make good the defect;
- (b) The Warrantor may propose reasonable monetary compensation in lieu of remedying the defect; or
- (c) The Warrantor may propose a combination of both repair and compensation.

3.4

The Principal shall consider the Warrantor's reasonable proposals and the parties shall endeavour in good faith to reach agreement. Where agreement cannot be reached, the dispute shall be resolved in accordance with clause 7.

4 Failure by Warrantor to perform remedial work

4.1

If the Warrantor fails to promptly, adequately and satisfactorily carry out the remedial work or to propose acceptable repair or compensation, the Principal may then arrange for the remedial work to be carried out by others.

4.2

The Principal shall first give the Warrantor 10 Working Days notice, or such other reasonable time as agreed by the Principal, to carry out and complete the remedial work. If the Warrantor does not do so within that time, the Principal may then advise the Warrantor in writing that the work will be carried out by other Persons.

4.3

In such an event, the Warrantor is not released from its obligations under this warranty, which continue in full force and effect, except for the defect remedied by the Principal or by another Person contracted by the Principal.

4.4

The reasonable Cost of remedial work carried out by such other Persons including all reasonable Costs of the Principal shall be paid to the Principal by the Warrantor on demand.

5 Exclusions

The Principal agrees that the Warrantor is not liable for any defect or damage caused by:

- (a) Wilful act or negligence of the Principal or any Person other than the Warrantor;
- (b) Fire, explosion, earthquake, war, subsidence, slips, faulty materials, or workmanship other than caused by the defect in the Warranted Works;
- (c) Any force of nature which the Warrantor could not have reasonably foreseen;
- (d) Any neglect or unnecessary delay by the Principal in giving notice to the Warrantor of a defect in the Warranted Works becoming apparent;
- (e) Design faults, errors, or discrepancies, unless the Warrantor undertook the design of the part of the Warranted Works that is the subject of the defect;
- (f) Use of the Warranted Works by the Principal or any other Person in any manner or for any purpose not being the intended manner of use or purpose of the Warranted Works;
- (g) Failure by the Principal or other Person to maintain the Warranted Works in accordance with good practice and any manufacturer's stated or recommended instructions or requirements; or
- (h) Fair wear and tear.



6 Assignment

The Principal may assign the benefit of this warranty to any Person.

7 Disputes

Any dispute between the Principal and the Warrantor arising out of this warranty is to be referred to arbitration under the Arbitration Act 2014 before a sole arbitrator. If, within 15 Working days of notice of dispute, the Principal and the Warrantor cannot agree on a single arbitrator, the arbitrator shall be appointed, upon request of a party, by the High Court of the Cook Islands.

In witness of which this deed has been executed.

SIGNED on behalf of the Contractor by:

[Click to enter text or paste signature](#)

Director

SIGNED on behalf of the Warrantor by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

SIGNED on behalf of the Principal by:

[Click to enter text or paste signature](#)

Director

[Click to enter text or paste signature](#)

Director

NOTE – The warranty shall be executed by the Warrantor and the Principal in the manner required for execution of a deed. Any of these parties which are a company shall execute the warranty by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the Warranty is signed under the name of the company by that director, but the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) shall execute by affixing its seal, which shall be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party shall sign and the signature shall be witnessed by another person. The witness shall not only sign but shall also add his or her occupation and address.



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 14 – Agreement for off-site Materials

THIS AGREEMENT

is dated the Click to enter day day of Click to enter month 20 Click to enter year
BETWEEN Click to enter text ('the Principal')
AND Click to enter text ('the Contractor')
AND Click to enter text ('the Warrantor')

INTRODUCTION:

- A** By a contract dated the Click to enter day day of Click to enter month 20 Click to enter year and known as Click to enter text ('the Contract') made between the Principal and the Contractor, the Contractor agreed to carry out the work and obligations imposed on the Contractor by the Contract ('the Contract Works').
- B** The Contractor and the Subcontractor have entered into a subcontract for the performance of part of the Contract Works and/or the supply of Materials described in Schedule A to this agreement ('the Materials') and intended to be used by the Contractor and/or the Subcontractor in the Contract Works.
- C** The Contractor or the Subcontractor (as nominated in Schedule C) ('the Bailee') proposes to store the Materials at the premises of the Bailee ('the Premises') as identified in Schedule B as bailee for the Principal, for the purpose of storage, fabrication, sub-assembly, or as otherwise required for the Contract Works prior to being delivered to the Site for incorporation into the Contract Works.
- D** The Contractor has requested the Principal to authorise the Engineer to certify payment for the Materials notwithstanding that the Materials have not been delivered to the Site.
- E** The Principal has agreed to authorise the Engineer to certify payment for the Materials, notwithstanding that the Materials have not been delivered to the Site, subject to all the provisions of this agreement having been fulfilled.

SCHEDULE A

Description of Materials inclusive of work performed on them:

Road marking Paint as detailed in the Specification to this contract

SCHEDULE B

The location in Cook Islands at which the Materials will be stored is:

ICI Works Depot, Main Road, Arorangi, Rarotonga

SCHEDULE C

'The Bailee' shall be:

The Contractor

OR

The Subcontractor



IT IS AGREED AS FOLLOWS:

1. **THE** Materials to which this agreement relates are those described in Schedule A to this agreement, all of which Materials are currently on the Premises identified in Schedule B.
2. **THE** Premises identified in Schedule B are in the sole control of the party identified in Schedule C and that party shall act as bailee of the Materials until such time as the Materials are delivered to the Site or taken possession of by the Principal.
3. **THE** undertakings, warranties, covenants, agreements and other obligations of the Contractor or the Subcontractor shall bind and be deemed to have been given or assumed by each of them severally and by both of them jointly.
4. **THE** Contractor and the Subcontractor agree that they will cause the Materials to be set apart at the Premises and be clearly and visibly marked individually or in sets as being the property of the Principal and their destination as being the Site. The method used to mark the Materials and the procedures by which the mark is applied to the Materials shall be as required by the Contract or as otherwise approved by the Principal.
5. **NEITHER** the Contractor nor the Subcontractor will permit, allow, or cause the Materials to be taken away from the Premises, except:
 - (a) For the purpose of being transported to the Site and used in the Contract Works; or
 - (b) That the Principal may at its sole discretion take possession of the Materials for use other than for the Contract Works; provided that:
 - (c) Where the Principal takes possession of any Materials under clause 5(b) above, and the Contractor thereby suffers delay or the Contractor or the Subcontractor incurs additional cost, the taking of possession shall be treated as a Variation under the Contract, unless the taking of possession is pursuant to clauses 14.2.1 or 14.2.2 of the Contract; and
 - (d) Where the Principal takes possession of any Materials under clause 5(b) above, and additional work has been carried out on those Materials since being paid for by the Principal, the Principal shall pay the Contractor for that additional work in accordance with the Contract before taking possession of the Materials.
6. **THE** Engineer, upon being satisfied that the Materials have been set apart and marked as required by this agreement, and upon the Contractor providing satisfactory evidence that the requirements of clauses 12 and 20 below have been fully satisfied, shall include in any Payment Schedule issued by the Engineer under the Contract a sum representing the reasonable value of such Materials calculated in accordance with the Contract.
7. **UPON** the Principal having made payment for the Materials, less any retentions or deductions prescribed in the Contract, title to such Materials shall immediately vest in the Principal free of all security interests, charges and encumbrances of any nature whatsoever.
8. **WHERE** the Contractor receives payment for Materials and the Subcontractor is entitled to some or all of the Principal's payment, the Contractor shall promptly pay the Subcontractor for such Materials.
9. **UPON** the request of the Subcontractor, the Engineer shall advise the Subcontractor whether the Contractor has received any payment from the Principal for such Materials.
10. **THE** Contractor and the Subcontractor agree that the Materials will be held by the Contractor or the Subcontractor solely as bailee for the Principal and such bailment will constitute a security interest in favour of the Principal.
11. **THE** Bailee shall promptly do all things including executing any documents and providing all information which the Principal requires to ensure that the Principal receives and maintains at all times a first ranking security interest in the Materials. This shall include procuring from any third party who has registered a financing statement against the Bailee, a waiver, in a form acceptable to the Principal, of any security interest or claim which might otherwise extend to the Materials or their proceeds.
12. **THE** Bailee shall not discharge or amend any financing statement registered under clause 11 above without the prior written consent of the Principal.



13. **THE** Bailee hereby grants to the Principal reasonable, free, and unencumbered right of access to the Premises to:
 - (a) Inspect the Materials, and verify or undertake the marking and setting apart of the Materials;
 - (b) Take possession of the Materials for the purpose of delivery to the Site and inclusion in the Contract Works;
 - (c) Remove the Materials from the Premises for the purpose of delivery to the Site and inclusion in the Contract Works; and
 - (d) Take possession of the Materials for use other than for the Contract Works,and in each case in a manner that does not cause damage to any other property at the Premises. The Bailee shall take all steps and do all things as shall be necessary to ensure that the Principal obtains access to the Premises for the purposes of this agreement.
14. **THE** Bailee shall not, except as permitted in clause 5, remove or cause or permit the Materials to be moved from the Premises. The Bailee shall nevertheless be responsible to the Principal for any loss or damage thereto and for any costs of storage or handling.
15. **THE** Bailee shall, when required to do so by the Contractor or the Principal, arrange for the transportation of the Materials to the Site. Such transportation shall be at the cost of the Bailee in all things including loading, unloading, and freight.
16. **WHERE** the Materials are not insured under the construction policy provided in accordance with 8.3.1 or 8.8.1 of the Contract, the Bailee shall, at its expense:
 - (a) Effect a material damage insurance policy covering all of the Materials subject to this agreement in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage. Such insurance may include an exclusion for loss or damage sustained during processing;
 - (b) Effect a transit insurance policy for transit of all the Materials from the Premises to the Site in the name of the Principal to the satisfaction of the Principal, as provided in 8.2.1 of the Contract for the full duration of the off-site storage.
17. **WITHIN** 15 Working Days of the date of this agreement, the Bailee shall furnish the Principal and the Contractor with evidence of such insurance.
18. **THE** Bailee represents and warrants to the Principal and to the Contractor (where applicable) that:
 - (a) It has good and clear title to the Materials;
 - (b) It has the ability to assign and transfer the Materials to the Principal or the Contractor; and
 - (c) The Materials will be transferred to the Principal or the Contractor free of any security interest.
19. **THE** Bailee undertakes that, if it charges or mortgages all or any part of its property (either real or personal), assets, or undertaking, it will obtain written confirmation from the chargee or mortgagee that the charge or the mortgage over such property, assets, or undertaking does not extend to the Materials once they have been paid for by the Principal or the Contractor (as applicable).
20. **NOTHING** in this agreement shall be deemed to limit, waive, or affect the Engineer's powers under the Contract to order the removal from the Site or the Premises of Materials which are not in accordance with the Contract and the substitution by the Contractor at its own risk and expense of proper Materials. Nothing in this agreement shall be deemed to limit, waive or affect any other powers conferred on the Engineer and/or the Principal under the Contract.
21. **EACH** party shall pay its own costs of and incidental to the negotiation, preparation, execution, and any amendment of this agreement.
22. **WORDS** and phrases in this agreement shall have the same meanings as are ascribed to them under the Contract except where the context or any express provision of this agreement requires otherwise.



SIGNED BY [Click to enter text or paste signature](#) (Authorised Signatory)

of [Click to enter text](#) (Principal)

SIGNED BY [Click to enter text or paste signature](#) (Authorised Signatory)

of [Click to enter text](#) (Contractor)

SIGNED BY [Click to enter text or paste signature](#) (Authorised Signatory)

of [Click to enter text](#) (Subcontractor)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 15 – Practical Completion Certificate

This Practical Completion Certificate is issued under 10.4.3(a) or 10.4.4.

Contract for	Click to enter text	<i>(Contract name and number if applicable)</i>
Principal	Click to enter text	<i>(Insert name of Principal)</i>
Contractor	Click to enter text	<i>(Insert name of Contractor)</i>

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion

(Specify Separable Portion if applicable)

Receipt of the Contractor's notice dated [Click to enter a date](#) and issued in accordance with 10.4.2 is acknowledged.

In accordance with 10.4.3(a) or 10.4.4 *(select one)*, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Practical Completion Certificate under 10.4, notwithstanding that there may be minor omissions and/or minor defects (as listed in the attached schedule) which satisfy the criteria in 10.4.1 (a), (b), and (c).

The Contractor is required to remedy all of the listed omissions or defects within the period stated in the attached schedule against the relevant omission or defect, or at the latest within [Click to enter days](#) Working Days of the date of this certificate.

Practical Completion was achieved

on [Click to enter a date](#) at [Click to enter time](#).

Signed by the Engineer	Click to enter text or paste signature
Name	Click to enter text
Date	Click to enter a date

SCHEDULE

The following omissions and/or defects have been assessed as being of a minor nature satisfying the criteria in 10.4.1(a), (b), and (c) and were identified during an inspection carried out by the Engineer or Engineer's Representative on [Click to enter a date](#)

(List minor omissions and defects)

[Click to enter text](#)



NZS 3910:2013 Conditions of contract for building and civil engineering construction

Schedule 16 – Final Completion Certificate

This certificate is a Final Completion Certificate issued under 11.3.1.

Contract for	Click to enter text	<i>(Contract name and number if applicable)</i>
Principal	Click to enter text	<i>(Insert name of Principal)</i>
Contractor	Click to enter text	<i>(Insert name of Contractor)</i>

This certificate relates to:

- (a) The whole of the Contract Works referred to above;
- (b) The following Separable Portion

(Specify Separable Portion if applicable)

In accordance with 11.3.1, the Engineer certifies that the Contract Works or Separable Portion to which this certificate relates qualify for a Final Completion Certificate issued under 11.3

on [Click to enter a date](#) at [Click to enter time](#).

Signed by the Engineer	Click to enter text or paste signature
Name	Click to enter text
Date	Click to enter a date

