

Special conditions Amendments to AS4000 and AS4902 General Conditions

(August 2022)



Legal Services Business Unit

Finance Group
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629 Newcastle Street
Leederville
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Enquiries should be addressed to the Head of Legal Services.



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Operative Provisions

1. Definitions and Interpretation

The meanings of the terms used in the Contract are set out below:

contracted	means entered into a legal, valid and binding agreement (whether in writing or not).
Contractor Deposit Instruction	means an irrevocable payment instruction in relation to the operation of the Project Bank Account, the purpose of which is to initiate deposits or transfers by the Contractor, in the form agreed pursuant to the PBA Trust Deed Poll
Opt-in Notice	means a notice executed by an Opt-in Subcontractor in the form set out in the PBA Trust Deed Poll.
Opt-in Subcontractor	means: (a) any person that is contracted by the Contractor to: (i) undertake work or services; or (ii) undertake work or services and supply goods or materials, where the total aggregate value of such 'work or services' or 'work or services and supply of goods or materials' in connection with the Works is less than \$20,000 (GST inclusive); or (b) any person that is a Supplier in connection with the Works, where the person has expressly stated (to the Contractor) that they wish to participate in the trust created by the PBA Trust Deed Poll.
Payment Report	means a report in a format agreed between the Principal and Contractor and made in relation to the period since the last payment made by the Principal under the Contract identifying: (a) any Subcontractors who have performed work included in the Superintendent's most recent payment certificate, who have already been paid for that work by the Contractor; (b) any rights of set-off that the Contractor is able to exercise (or intends to exercise) in relation to moneys that might otherwise be payable to any Subcontractor identified in Progress Payment Instruction(s) for the current month (including reasonable details of the amounts that may be set-off and to the extent it is lawfully able to do so, reasons for the exercise of the set-off right); (c) any Subcontractor that has failed to make a payment claim under a Subcontract (but which was entitled to do so), where work undertaken by the Subcontractor has been included in the Superintendent's most recent payment certificate; (d) any amount claimed by a Subcontractor that is included in the Superintendent's most recent payment certificate, and is in dispute, including, but not limited to: (i) any formal dispute between the Contractor and Subcontractor under the relevant subcontract; (ii) any disagreement between the Contractor and Subcontractor in relation to the amount claimed by the Subcontractor; or (iii) any claim made by the Subcontractor under the <i>Building and Construction Industry (Security of Payment) Act 2021 (WA)</i> ; (e) any difference between the amount allocated to a Subcontractor (or to works performed by a Subcontractor) in the payment claim and the amount allocated to that Subcontractor in the Progress Payment Instruction(s), and the reasons for the difference; and (f) copies of any Opt-In Notices that have been received by the Contractor since the issue of the previous Payment Report, or in the case of the first Payment Report, since the award of the Contract.



PBA Agreement	means the agreement entered into between the Contractor, the Principal and the Bank which establishes the Project Bank Account.
PBA Trust Deed Poll	means the document of that name executed by the Contractor and which is also executed by the Principal on or around the date of the Contract, pursuant to which a Project Bank Account is to be established and moneys due to the Contractor under the Contract are to be paid and held on trust, such document to be in a form and substance acceptable to the Principal.
PPI – Consolidated Allocation	<p>means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which contains a breakdown of the total amount identified in the payment certificate and sets out:</p> <ul style="list-style-type: none">(a) the amounts payable to each of the Subcontractors under their relevant Subcontract;(b) any allowable Retention Amounts to be retained by the Contractor pursuant to any relevant Subcontract (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll);(c) any amount that is to be paid to the Contractor pursuant to the Contract; and(d) a total to be paid (that is the aggregate of the amounts identified pursuant to subclauses (a), (b) and (c) above which, to avoid doubt, must be equal to the amount identified in the payment certificate to which the Progress Payment Instruction relates, <p>and which complies with the requirements of the Contract</p>
PPI – Contractor Allocation	<p>means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out any amount to be paid to the Contractor out of the Project Bank Account, being the amount of money that remains after the aggregate of the amounts in each:</p> <ul style="list-style-type: none">(a) PPI Subcontractor Allocation; and(b) PPI Retention Allocation, <p>are subtracted from the amount certified by the Superintendent for the month pursuant to the Contract and which complies with the requirements of the Contract.</p>
PPI – Retention Allocation	means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out any allowable Retention Amounts to be retained by the Contractor pursuant to any relevant Subcontract (which amounts are to be held in the Project Bank Account and released in accordance with the PBA Trust Deed Poll) and which complies with the requirements of the Contract
PPI – Subcontractor Allocation	means an irrevocable payment instruction in the form required by the PBA Trust Deed Poll, which sets out the amounts payable to each of the Subcontractors under their relevant Subcontract and which complies with the requirements of the Contract.
PPSR	means the “Personal Property Securities Register” maintained pursuant to the <i>Personal Property Securities Act 2009</i> (Cth).
Progress Payment Instruction	<p>means a PPI - Consolidated Allocation or any one or more of a:</p> <ul style="list-style-type: none">(a) PPI - Contractor Allocation;(b) PPI - Subcontractor Allocation; or(c) PPI - Retention Allocation, <p>the purpose of which is to originate a payment by the Principal into the Project Bank Account.</p>
Project Bank Account	means the bank account established as a trust account with a single Bank as more particularly defined in the PBA Trust Deed Poll.
Retention Amount	means any moneys which the Contractor is entitled to retain from amounts due to Subcontractors pursuant to any express provision of a Subcontract permitting either a specified percentage amount or a specified amount to be retained from payments to be made under the Subcontract.



Retention Release Event	is the agreement or determination or occurrence of an event under a Subcontract consequent upon which retention moneys or any part thereof (retained pursuant to an express provision of that Subcontract) are to (as relevant) be released to the Subcontractor or paid to the Contractor.
Retention Release Instruction	means an irrevocable payment instruction in relation to the operation of the Project Bank Account which instructs the payment of Retention Amounts that are payable, that is in the form agreed pursuant to the PBA Trust Deed Poll.
Subcontractor	means: (a) a person who has been contracted by the Contractor to: (i) undertake work or services; or (ii) undertake work or services and supply goods or materials; where in either case the total aggregate value of such 'work or services' or 'work or services and supply of goods or materials' in connection with the Project is equal to or greater than \$20,000 (GST inclusive); and (b) any Opt-in Subcontractor that has signed an Opt-in Notice and given a copy of that notice to the Contractor. To avoid doubt, a "Subcontractor" may be a Selected Subcontractor or a Nominated Subcontractor (in each case as defined in the Contract).
Supplier	means a person who has been contracted to supply goods or materials to the Contractor in connection with the Works.

2. Application

The following Special Conditions must be read and construed with any other applicable Special Conditions of Contract and General Conditions of Contract. In the event of any inconsistencies, the terms of these Special Conditions will prevail.

3. Clause 37 of the General Conditions

The entirety of clause 37 of the General Conditions of Contract is deleted and replaced with the following:

37.1 PBA trust documents

Within 28 days of the award of the Contract, the Contractor must deliver to the Principal:

- (a) a PBA Trust Deed Poll duly executed by the Contractor prior to delivery; and
- (b) a PBA Agreement which complies with the PBA Trust Deed Poll, duly executed by the Contractor and the bank,

in each case delivered unconditionally on the basis that the Principal may execute and date the documents; and

- (c) if the Contractor is subject to a registered security interest over all or substantially all of its assets (as identified under the PPSR), a duly executed deed of release or priority deed poll (in a form and substance acceptable to the Principal) pursuant to which the trust arrangements effected pursuant to the PBA Trust Deed Poll and the PBA Agreement are to be released from, or take priority over, any such security;
- (d) if requested by the Principal, or if the Contractor does not provide any deeds of release or priority deed polls pursuant to clause 37.1(c), the Contractor must provide the Principal with evidence, including but not necessarily limited to PPSR search results obtained within the previous 10 days, demonstrating to the Principal's reasonable satisfaction that all or substantially all of the Contractor's assets are not subject to a registered security interest; and
- (e) evidence to the satisfaction of the Principal that the Project Bank Account has been opened.



The Contractor must not make any claim for payment until such time as all of the above documents have been delivered to the Principal.

37.2 Notice of PBA trust – Subcontractors

Upon request by any Subcontractor, the Contractor must provide to that Subcontractor:

- (a) a copy of the executed PBA Trust Deed Poll; and
- (b) a copy of the executed PBA Agreement which must include details of the relevant account number and name of the Project Bank Account.

37.3 Notice of PBA trust – right to participate

Prior to any person being contracted by the Contractor to:

- (a) undertake work or services; or
- (b) undertake work or services and supply goods or materials,
in connection with the Works, where the total aggregate value of such work or services or supply of goods or materials in connection with the Works is less than \$20,000 (GST inclusive), or
- (c) supply goods or materials of any kind in connection with the Works where the value of such goods or materials is \$20,000 (GST inclusive) or more,

the Contractor must provide reasonable written notice of the trust created and contemplated by the PBA Trust Deed Poll and PBA Agreement and of the rights that person has to participate in the same. The Contractor must notify all potential Subcontractor that they are bidding for a PBA project.

37.4 PBA trust – contracted value increases

If a person that is contracted by the Contractor in relation to part of the Works is not a Subcontractor because the agreed total aggregate value of the 'work or services' or 'work or services and supply of goods or materials' by that person is less than \$20,000 (GST inclusive), then on and from the point in time that value threshold is equalled or exceeded:

- (a) such person will be a Subcontractor for the purposes of this Contract; and
- (b) the Contractor must, in the following Payment Report, notify the Principal that such person has become a Subcontractor.

To avoid doubt, the requirement of the Contractor to allocate and pay retentions into the Project Bank Account is not retrospective, and will only apply once that person becomes a 'Subcontractor' and from the time that value threshold is equalled or exceeded.

37.5 Opt-in Subcontractor

The Contractor will ensure that:

- (a) any Opt-in Subcontractor is promptly provided with the form of an Opt-In Notice (which must be within seven calendar days of the Opt-In Subcontractor expressly stating to the Contractor that they wish to participate in the trust created by the PBA Trust Deed Poll); and
- (b) copies of all duly signed Opt-in Notices received by it are forthwith supplied to the Principal.

Upon the supply of a duly signed Opt-in Notice to the Contractor, the Opt-in Subcontractor that has signed that notice will be deemed a Subcontractor (on and from that point) for all purposes of the Contract and shall be paid via the Project Bank Account pursuant to the operation of the PBA Trust Deed Poll.

37.6 Payment claims

The Contractor shall claim payment progressively in accordance with Item 28.

An early progress claim shall be deemed to have been made on the date for making that claim.



The Contractor provide written progress payment claims to the Superintendent supported by evidence of the amount due to the Contractor and any such information as the Superintendent may reasonably require.

Claims for payment must include:

- (a) details of the value of the WUC done accompanied by the updated construction program and relevant progress report pursuant to subclause 32.2;
- (b) the percentage completed for each item of work in the schedule of prices; and
- (c) all amounts then due to the Contractor arising out of or in connection with the Contract or any alleged breach thereof.

37.7 Payment certificate

If the Contractor fails to make a claim for payment under clause 37.6, the Superintendent may nevertheless issue a payment certificate.

Within 14 days after receipt of a claim for payment, the Superintendent must issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the opinion of the Superintendent, is to be made by the Principal to the Contractor or the Contractor to the Principal. The Superintendent must set out in the certificate the calculations employed to arrive at that amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.

The Superintendent must allow in any payment certificate issued pursuant to this clause 37.7 or any Final Certificate issued pursuant to clause 37.16, amounts paid under the Contract and amounts otherwise due from the Principal to the Contractor and/or due from the Contractor to the Principal arising out of or in connection with the Contract, including but not limited to any amount due or to be credited under any provision of the Contract.

If no payment certificate has been issued by the Superintendent within the required time, the Contractor's claim, but excluding:

- (a) any amounts in such claim in respect of variations not expressly approved in writing by the Superintendent (including any deemed variations);
- (b) any amounts (other than those included in a variation expressly approved in writing by the Superintendent) arising under clause 11 in respect of changes in statutory requirements; and
- (c) any other claim for damages arising under or in connection with the Contract or breach thereof,

will, notwithstanding the absence of a payment certificate, be deemed to be the amount due as if it were set out in a payment certificate and as if such payment certificate were to have been issued on the 14th day after receipt of the claim for payment. In the Contract, a reference to an amount identified in a payment certificate must include any amount deemed to be set out in a payment certificate.

Subject to the provisions of the Contract, where a payment certificate issued by the Superintendent certifies an amount payable from the Contractor to the Principal, the Contractor must, within 14 days of the issue of the payment certificate, pay to the Principal an amount not less than the amount shown on the payment certificate.

37.8 Progress Payment Instructions

Subject to the provisions of the Contract and where any certificate certifies amounts due from the Principal to the Contractor, within 19 calendar days from the date that the Contractor's payment claim is submitted, the Contractor must issue to the Superintendent and the Principal the completed Progress Payment Instruction(s), consisting of either:

- (a) a single PPI - Consolidated Allocation; or
- (b) any one or more of:
 - (i) a PPI - Contractor Allocation;



- (ii) a PPI - Subcontractor Allocation; and / or
- (iii) a PPI - Retention Allocation.

The aggregate total amounts of the Progress Payment Instruction(s) provided to the Superintendent and the Principal must be equal to the amount set out in the payment certificate to which the Progress Payment Instruction(s) relate.

At the same time as the Contractor issues the Progress Payment Instruction(s) to the Superintendent and the Principal, the Contractor must:

- (c) if the Progress Payment Instruction is not a PPI – Consolidated Allocation, inform the Principal of the total number of Progress Payment Instructions that the Contractor intends to provide in relation to the payment certificate to which the Progress Payment Instruction(s) relate;
- (d) provide a Payment Report to the Superintendent and the Principal;
- (e) provide a signed statutory declaration as set out in Annexure Part E by, or on behalf of, the Contractor;
- (f) if requested by the Principal, provide to the Principal invoices issued by any Subcontractor in relation to the payment claim; and
- (g) provide the Progress Payment Instruction(s) to the bank where the Project Bank Account is held.

37.9 Shortfall of moneys

To the extent that:

- (a) the total amount due and owing from (or otherwise payable by) the Contractor to a Subcontractor is greater than the amount identified in the relevant Progress Payment Instructions for that Subcontractor; and/or
- (b) amounts are due and owing from the Contractor to a Subcontractor and the amounts are not referable to any previously issued Progress Payment Instructions,

the Contractor must pay into the Project Bank Account any amount required to make payment of the total amount due to the Subcontractor. Any such payment into the Project Bank Account must:

- (c) be accompanied by a Contractor Deposit Instruction; and
- (d) be made in sufficient time so as to allow the bank to apply the relevant funds to that Subcontractor at the same time as acting on the relevant Progress Payment Instructions and in any event, no less than two days prior to the scheduled date of payment for such Progress Payment Instructions,

and the moneys deposited by such payment into the Project Bank Account will be held on trust for the benefit of the relevant Subcontractor.

37.10 Payment

Following receipt by the Principal of a properly completed and valid Progress Payment Instruction(s) and Payment Report, and providing the Principal has received the statutory declarations required in compliance with clause 38.1, the Principal must (subject to the other provisions of the Contract) pay the amount shown in the payment certificate into the Project Bank Account.

The Principal must pay the amount within 28 days of receipt of the relevant payment claim.

In the Contract, where a date for payment is not a day upon which the banks in Perth are open, the obligation to pay shall be on the next day upon which the banks in Perth are open.

Within five calendar days of the date of its payment into the Project Bank Account, the Principal must issue to the Contractor a Recipient Created Tax Invoice in respect of GST for the total amount of the relevant payment certificate or Final Certificate and paid by the Principal into the Project Bank Account.



37.11 Evidence of distributions

Within 7 calendar days of the Principal making a payment into the Project Bank Account pursuant to clause 37.10, the Contractor must provide the Superintendent and Principal with written evidence demonstrating that payments have been made from that Project Bank Account identical (in terms of recipients and amounts) to those identified in the corresponding Progress Payment Instruction(s) and Payment Report received prior to the Principal's payment.

Unless otherwise agreed by the Superintendent or Principal, this evidence must take the form a written report or notice issued by the bank that established and administers the Project Bank Account. This document must, at a minimum, identify the payment or processing dates, amounts and recipients for all payments made out of the Project Bank Account in response to the Principal's payment into the Project Bank Account.

37.12 Effect of payment

Payments made into the Project Bank Account by the Principal are deemed to be payments made to the Contractor under the Contract.

A payment made into the Project Bank Account pursuant to this clause does not prejudice the right of either party to dispute under clause 42 whether the amount so paid is the amount properly due and payable and on determination (whether under clause 42 or as otherwise agreed) of the amount so properly due and payable, the Principal or Contractor, as the case may be, is liable to pay the difference between the amount of such payment and the amount so properly due and payable. If the Principal is liable to pay the difference, it must (subject to the rights of the Principal pursuant to clause 38) be paid into the Project Bank Account by the Principal upon receipt from the Contractor of a properly completed Progress Payment Instruction.

Other than final payment, payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

37.13 Unfixed plant and materials

Except as provided in the Contract or otherwise agreed between the Principal and Contractor, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

The Principal shall not be liable to pay for unfixed plant and materials unless they are listed in Item 29 or otherwise agreed between the Principal and Contractor, and the Contractor:

- (a) provides the additional security in Item 13(e); and
- (b) establishes to the satisfaction of the Superintendent that the Contractor has paid for the item and, if relevant or possible, the item is properly stored, labelled the property of the Principal and is adequately protected.

Upon payment into the Project Bank Account of the amount which includes the value of the item, and upon the release of any security, the item shall be the property of the Principal free of any lien or charge.

37.14 Retention Release Events

The Contractor acknowledges the provisions of the PBA Trust Deed Poll, including in relation to the occurrence of Retention Release Events. The Contractor agrees to comply with the PBA Trust Deed Poll and to forthwith provide the Principal with a copy of any Retention Release Instruction issued pursuant to the PBA Trust Deed Poll.

37.15 Security of Payments Act

The Contractor acknowledges the provisions of the *Building and Construction Industry (Security of Payment) Act 2021* (WA) (**SOP Act**) and (in particular) section 14 of the SOP Act. The Contractor hereby confirms that nothing in the Contract, the PBA Trust Deed Poll or the PBA Agreement shall be construed as permitting or otherwise allowing the Contractor to implement an arrangement with its Subcontractors that would result in provisions of its Subcontracts having no effect by virtue of the application of section 14 or any other provision of the SOP Act.



37.16 Final payment claim and certificate

Within 28 days after the expiry of the last defects liability period, the Contractor shall give the Superintendent a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the Contract. Within 42 days after the expiry of the last defects liability period, the Superintendent shall issue to both the Contractor and the Principal a final certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract.

Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 14 days after the debtor receives the final certificate.

The final certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the Contract except for:

- (a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the final certificate;
- (b) any defect or omission in the Works or any part thereof which was not apparent at the end of the last defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final certificate;
- (c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of dispute pursuant to clause 42, served before the 7th day after the issue of the final certificate.

The final certificate may be relied on by either party as a bar to any action, suit, claim, cause of action or proceeding in respect of any new obligation or claim arising in connection with the subject matter of the Contract, except for the matters in subclauses 37.16(a) to (d) above.

37.17 Interest

Interest in Item 30 shall be due and payable after the date of default in payment.

37.18 Other moneys due

The Principal may elect that moneys due and owing otherwise than in connection with the subject matter of the Contract also be due to the Principal pursuant to the Contract.

37.19 Goods & Services Tax

The parties confirm that they are both registered for GST pursuant to the GST Act and that should either of them cease to be so registered it shall inform the other at the earliest opportunity.

Unless otherwise agreed with the Principal in relation to the Contract, the Contractor shall not issue tax invoices by way of claims for payment and hereby agrees that the Principal shall issue Recipient Created Tax Invoices setting out all relevant details required under the GST Act and related rulings, including the amount to be paid on account of GST for all payments made under the Contract.

4. Clause 38 of the General Conditions

The entirety of clause 38 of the General Conditions of Contract is deleted and replaced with the following:

38.1 Payment of works and subcontractors

Unless the Superintendent otherwise directs, the Contractor must, as per clause 37.8(e), include with its Progress Payment Instruction a signed statutory declaration as set out in Annexure Part E by, or on behalf of, the Contractor.

The Superintendent may also at any time make a request for the Contractor to provide documentary evidence to the Superintendent that at the date of the direction all workers who have been employed



by a subcontractor or supplier of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract

38.2 Withholding payment / revoking and reissuing

The Principal may (in its sole discretion) withhold payment of moneys due to the Contractor if:

- (a) it exercises its rights under clause 37.18; or
- (b) the contractor fails to provide a statutory declaration or other evidence to the Superintendent in accordance with clause 38.1,

and may continue to withhold such payment until the Contractor complies with clauses 38.1; and

- (c) if the statutory declaration supplied by the Contractor pursuant to clause 38.1 identifies, or if the Principal reasonably believes that:
 - (i) the Progress Payment Instructions are not true and accurate, do not properly allocate amounts payable to Subcontractors pursuant to their subcontracts, or otherwise do not comply with the Contract;
 - (ii) the Payment Report is not true and accurate, does not properly allocate amounts payable to Subcontractors pursuant to their subcontracts, or otherwise does not comply with the Contract;
 - (iii) there are manifest errors (including arithmetic errors) in any of the Progress Payment Instructions or in the Payment Report;
 - (iv) there are Opt-in Subcontractors who wish to become a 'Subcontractor' but have not yet been provided with an Opt-in Notice;
 - (v) there are persons that should have been deemed to be a Subcontractor pursuant to the Contract, and this information has not been provided to the Principal;
 - (vi) the Contractor is liable for amounts due and owing to Subcontractors or Opt-in Subcontractors or any other subcontractor or supplier (regardless of subcontract value) in respect of works carried out and completed and such amounts:
 - (vii) relate to works under the Contract that have already been the subject of a payment certificate under the Contract; and
 - (viii) remain unpaid as at the date of the statutory declaration;
 - (ix) there has been a change (after the date of this Contract) in the security interests registered over the Contractor (as identified under the Personal Property Securities Register) and a duly executed deed of release or priority deed poll in relation to that security interest (in form and substance acceptable to the Principal) has not been supplied to the Principal;
 - (x) the Contractor has breached the PBA Trust Deed Poll and that breach has not been remedied to the reasonable satisfaction of the Principal;
 - (xi) there is any inconsistency or ambiguity between the invoices issued by the Subcontractors and the calculations set out in the Progress Payment Instructions; and/or
 - (xii) the \$1 payment as required by clause 3.1(c) of the PBA Trust Deed Poll has not been successfully made through the Project Bank Account.

Without limiting its right to withhold payment, the Principal may (in its sole discretion) direct the Contractor to revoke and reissue any Progress Payment Instruction to both the Principal and the bank where the Project Bank Account is held if:

- (d) there are manifest errors (including arithmetic errors) in any of the Progress Payment Instructions or in the Payment Report; or
- (e) that Progress Payment Instruction does not comply with the requirements of the Contract.



If the Principal has provided comments on the Progress Payment Instructions, the reissued Progress Payment Instructions must properly take into account those comments.

38.3 Direct Payment

If:

- (a) prior to final payment;
- (b) there is no relevant relation back day (as defined in the Corporation Act) in respect of the Contractor; and
- (c) the Principal is entitled to or required to make payment to a subcontractor of a sum certified by the Superintendent as owing to the subcontractor under a subcontract,

the Principal may, on behalf of the Contractor, make the payment directly to the subcontractor and the amount so paid shall be a debt due from the Contractor to the Principal.

At the written request of the Contractor, and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker, subcontractor or supplier (although the Principal is not obliged to make such payment).

If a payment is made by the Principal to or in respect of a worker, subcontractor or supplier in compliance with a Legislative Requirement, the amount paid shall be a debt due from the Contractor to the Principal.

If any worker, subcontractor or supplier obtains a court order or determination, pursuant to s38 of the *Building and Construction Industry (Security of Payment) Act 2021 (WA)*, in respect of moneys referred to in clause 38.1 and produces to the Principal the court order or determination and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order or determination, and costs included in the order or determination, to the worker subcontractor or supplier and the amount paid shall be a debt due from the Contractor to the Principal.

5. Clause 39.2 of the General Conditions

The entirety of subclause 39.2 of the General Conditions of Contract is deleted and replaced with the following:

Clause 39.2 Contractor's default

If the Contractor commits a substantial breach of the Contract, the Principal may, by hand or by certified post, give the Contractor a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide security;
 - (ii) provide evidence of insurance;
 - (iii) comply with a direction of the Superintendent pursuant to subclause 30.3; or
 - (iv) use the materials or standards of work required by the Contract;
- (b) wrongful suspension of work;
- (c) substantial departure from a construction program without reasonable cause or the Superintendent's approval;
- (d) where there is no construction program, failing to proceed with due expedition and without delay;
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement;



- (f) in respect of clause 37.1, failing, within 28 days of the award of the Contract, to deliver to the Principal a duly executed deed of release or priority deed poll when required to do so by that Clause;
- (g) if there is a change (after the date of this Contract) in the security interests registered over the Contractor (as identified under the Personal Property Securities Register) failure to provide a duly executed deed of release or priority deed poll (in form and substance acceptable to the Principal) to the Principal within 14 days of the change; and
- (h) any breach of the PBA Trust Deed Poll or the PBA Agreement which (in the opinion of the Principal) is not minor or inconsequential in nature.

6. Annexure Part E

The entirety of Annexure Part E to the General Conditions of Contract is deleted and replaced with the following.



Statutory Declaration

Definitions

The Principal is: the Water Corporation

The Contractor is: _____

The Contractor's address is: _____

The Contract: The contract between the Principal and the Contractor being:

Contract Title: _____

Contract Number: _____

Date of Contract: _____

Declaration

Full Name: I _____

Address: of _____

Position Title: _____

Sincerely declare as follows:

1. I hold the position of position titled and am duly authorised by the Contractor to make this declaration on its behalf.
2. I am in a position to make this statutory declaration about the facts attested to and do so after making diligent inquiry and on the basis of my own knowledge.
3. In respect of the Progress Claim and Progress Payment Instruction (**PPI**) the subject of this statutory declaration:
 - a. all wages and claims up to the date of the PPIs of workmen employed on or in relation to the Contract, including the workmen employed by subcontractors, have been paid in accordance with the various Industrial Awards or Enterprise Agreements in relation to the performance of the Contract (including provision for all benefits accrued);
 - b. the PPIs are true and accurate and comply with the Contract (and to avoid doubt and without limitation, properly allocate amounts payable to Subcontractors pursuant to their subcontracts);
 - c. all Opt-in Subcontractors have supplied an Opt-in Notice to the Contractor;
 - d. to the extent that any previously issued PPI was not correct or for any other reason, the Contractor has no outstanding liabilities to Subcontractors or any other subcontractor or supplier (regardless of subcontract value) in connection with the Works, other than the payments the subject of the PPI;
 - e. the Payment Report issued with the PPI is true and accurate; and
 - f. there has been no change (since the date of the PBA Trust Deed) in the identity of the party with any registered security interests over the Contractor (as identified under the "Personal Properties Securities Register" maintained pursuant to the *Personal Properties Securities Act 2009* (Cth)) or if there has been, a duly executed



deed of priority or deed of subordination (in form and substance acceptable to the Principal) has been executed;

in each case as at the date of the PPIs issued, where terms defined in the Contract have the same meaning in this statutory declaration.

- 4. Where the progress claim the subject of this statutory declaration is the Final Payment Claim, any claims for damage or injury to property, whether to the Principal or to subcontractors, works or consultants has been satisfied.
- 5. The Principal or its delegate is authorised to provide copies of this statutory declaration to third parties.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declaration Act 2005*:

Signature of Declarant	
	declared at:
Place	
On (date)	
	before me
Signature of legally authorised person before whom the declaration is made:	
Name and title/qualification of person before whom the declaration is made	