New Zealand Standard

Conditions of contract for building and civil engineering construction

Superseding (in part) NZS 3910:2003
COMMITTEE REPRESENTATION

This Standard was prepared under the supervision of the P 3910 Committee the Standards Council established under the Standards Act 1988.

The committee consisted of representatives of the following organisations.

- Sherwyn Williams  (Co-opted Chair)
- Peter Degerholm  Arbitrators’ and Mediators’ Institute of New Zealand Inc.
- Andrew Brickell  Association of Consulting Engineers New Zealand Inc. and Institution of Professional Engineers New Zealand Inc.
- Beatrix Bergner  Auckland Council
- Michael Weatherall  Auckland Transport
- John Sutton  Institute of Public Works Engineering Australasia (New Zealand)
- Bob Oldnall  Insurance Council of New Zealand Inc.
- Simon Guillemin  Local Government New Zealand
- Malcolm Abernethy  New Zealand Contractors’ Federation Inc. and Roading New Zealand Inc.
- Colin Orchiston  New Zealand Institute of Architects
- Garrett Butt  New Zealand Institute of Building Surveyors
- Paul Maynard  New Zealand Institute of Quantity Surveyors
- Paul Turner  New Zealand Institute of Surveyors
- Rod Fulford  New Zealand Specialist Trade Contractors’ Federation
- Richard Quinn  New Zealand Transport Agency
- Peter Fehl  Registered Master Builders’ Federation
- Curt Martin  Water New Zealand

And observers from the following organisations.

- KiwiRail Ltd  New Zealand Law Society
- Registered Master Builders  Royal Institute of Chartered Surveyors

ACKNOWLEDGEMENTS

Standards New Zealand gratefully acknowledges the contribution of time and expertise from all those involved in developing this Standard. The contribution of the Chair was made possible by Kensington Swan, and assistance with the division of the previously single Standard into three Standards was facilitated by Simpson Grierson.

Standards New Zealand gratefully acknowledges the financial support of the following organisations.
New Zealand Standard

Conditions of contract for building and civil engineering construction

Superseding NZS 3910:2003
## AMENDMENTS

<table>
<thead>
<tr>
<th>No.</th>
<th>Date of issue</th>
<th>Description</th>
<th>Entered by, and date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTES
# CONTENTS

Committee representation ................................................................. IFC
Acknowledgement ........................................................................ IFC
Copyright ....................................................................................... IBC
Referenced documents ..................................................................... viii
Latest revisions ................................................................................ viii
Review of Standards ........................................................................ viii
Foreword ........................................................................................... ix
Outcome statement ........................................................................... x

**Contract Agreement** ..................................................................... 1

**General Conditions of Contract**

1 **INTERPRETATION** ................................................................. 3
   1.1 Application ........................................................................ 3
   1.2 Definitions ........................................................................ 3
   1.3 General ............................................................................. 8
   1.4 Law, currency, and language .............................................. 9
   1.5 Computation of time .......................................................... 9
   1.6 Duties of Engineer .............................................................. 9

2 **THE CONTRACT** ..................................................................... 10
   2.1 Type of contract .............................................................. 10
   2.2 Lump sum contract .......................................................... 10
   2.3 Measure and value contract .............................................. 11
   2.4 Cost reimbursement contract ........................................... 12
   2.5 Local authority contracts, contracts in public places, and road contracts ................................................................. 13
   2.6 Evidence of Contract ........................................................ 13
   2.7 Documents prepared by the Engineer or Principal ............ 14
   2.8 Documents prepared by the Contractor ............................. 15
   2.9 Assignment ...................................................................... 16
   2.10 No waiver ....................................................................... 16

3 **BONDS** ............................................................................... 17
   3.1 Contractor’s Bond ............................................................... 17
   3.2 Principal’s Bond ................................................................. 18

4 **SUBCONTRACTS** ................................................................. 20
   4.1 General ............................................................................. 20
   4.2 Nominated Subcontractors ............................................... 20
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>VARIATIONS</td>
<td>54</td>
</tr>
<tr>
<td>9.1</td>
<td>Variations permitted</td>
<td>54</td>
</tr>
<tr>
<td>9.2</td>
<td>Variation orders</td>
<td>54</td>
</tr>
<tr>
<td>9.3</td>
<td>Valuation of Variations</td>
<td>55</td>
</tr>
<tr>
<td>9.4</td>
<td>Daywork</td>
<td>58</td>
</tr>
<tr>
<td>9.5</td>
<td>Unforeseen physical conditions</td>
<td>59</td>
</tr>
<tr>
<td>10</td>
<td>TIME FOR COMPLETION</td>
<td>60</td>
</tr>
<tr>
<td>10.1</td>
<td>Commencement</td>
<td>60</td>
</tr>
<tr>
<td>10.2</td>
<td>Due Date for Completion</td>
<td>60</td>
</tr>
<tr>
<td>10.3</td>
<td>Extension of time</td>
<td>60</td>
</tr>
<tr>
<td>10.4</td>
<td>Practical Completion Certificate</td>
<td>62</td>
</tr>
<tr>
<td>10.5</td>
<td>Damages for late completion</td>
<td>63</td>
</tr>
<tr>
<td>10.6</td>
<td>Bonus for early completion</td>
<td>63</td>
</tr>
<tr>
<td>10.7</td>
<td>Occupancy by the Principal</td>
<td>64</td>
</tr>
<tr>
<td>11</td>
<td>DEFECTS LIABILITY</td>
<td>65</td>
</tr>
<tr>
<td>11.1</td>
<td>Defects Notification Period</td>
<td>65</td>
</tr>
<tr>
<td>11.2</td>
<td>Remedying of defects</td>
<td>65</td>
</tr>
<tr>
<td>11.3</td>
<td>Final Completion Certificate</td>
<td>66</td>
</tr>
<tr>
<td>11.4</td>
<td>Effect of Final Completion Certificate</td>
<td>66</td>
</tr>
<tr>
<td>11.5</td>
<td>Warranties</td>
<td>67</td>
</tr>
<tr>
<td>11.6</td>
<td>Guarantees</td>
<td>67</td>
</tr>
<tr>
<td>12</td>
<td>PAYMENTS</td>
<td>68</td>
</tr>
<tr>
<td>12.1</td>
<td>Contractor’s payment claims</td>
<td>68</td>
</tr>
<tr>
<td>12.2</td>
<td>Progress Payment Schedules</td>
<td>69</td>
</tr>
<tr>
<td>12.3</td>
<td>Retention monies</td>
<td>71</td>
</tr>
<tr>
<td>12.4</td>
<td>Final payment claim</td>
<td>72</td>
</tr>
<tr>
<td>12.5</td>
<td>Final Payment Schedule</td>
<td>73</td>
</tr>
<tr>
<td>12.6</td>
<td>Effect of Final Payment Schedule</td>
<td>75</td>
</tr>
<tr>
<td>12.7</td>
<td>Interest</td>
<td>76</td>
</tr>
<tr>
<td>12.8</td>
<td>Cost fluctuations</td>
<td>76</td>
</tr>
<tr>
<td>12.9</td>
<td>Provisional Sums</td>
<td>77</td>
</tr>
<tr>
<td>12.10</td>
<td>Provisional Items</td>
<td>77</td>
</tr>
<tr>
<td>12.11</td>
<td>Prime Cost Sums</td>
<td>78</td>
</tr>
<tr>
<td>12.12</td>
<td>Contingency sums</td>
<td>78</td>
</tr>
<tr>
<td>12.13</td>
<td>Goods and services tax</td>
<td>78</td>
</tr>
<tr>
<td>13</td>
<td>DISPUTES</td>
<td>79</td>
</tr>
<tr>
<td>13.1</td>
<td>General</td>
<td>79</td>
</tr>
<tr>
<td>13.2</td>
<td>Engineer’s review</td>
<td>79</td>
</tr>
<tr>
<td>13.3</td>
<td>Mediation</td>
<td>80</td>
</tr>
<tr>
<td>13.4</td>
<td>Arbitration</td>
<td>81</td>
</tr>
<tr>
<td>13.5</td>
<td>Suspension during dispute</td>
<td>82</td>
</tr>
<tr>
<td>13.6</td>
<td>Award of interest</td>
<td>82</td>
</tr>
</tbody>
</table>
14 FRUSTRATION AND DEFAULT ......................................................... 83
  14.1 Frustration ........................................................................... 83
  14.2 Default by the Contractor .................................................... 84
  14.3 Default by the Principal ........................................................ 85

15 SERVICE OF NOTICES ............................................................... 87
  15.1 General ................................................................................. 87

Appendix
A  Cost fluctuation adjustment by indexation .................................. 88
B  Contracts in public places and road contracts .............................. 90

Schedules to General Conditions of Contract
  1 Special Conditions of Contract – Specific Conditions of Contract .... 91
  2 Special Conditions of Contract – Other Conditions of Contract .... 103
  3 Form of Contractor’s performance bond ....................................... 104
  4 Form of Principal’s bond .......................................................... 106
  5 Form of Contractor’s bond in lieu of retentions ............................ 108
  6 Form of Producer Statement – Construction ............................ 110
  7 Information on Contractor arranged construction insurance ........ 111
  8 Information on Contractor arranged Plant insurance ................. 113
  9 Information on public liability insurance .................................... 115
 10 Information on Contractor arranged motor vehicle insurance ...... 117
 11 Information on Contractor arranged professional indemnity insurance 119
 12 Information on Principal arranged construction insurance .......... 120
 13 Form of Contractor (or Subcontractor) warranty .......................... 123
 14 Agreement for off-site Materials ............................................... 126
 15 Practical Completion Certificate .............................................. 130
 16 Final Completion Certificate .................................................... 131

Conditions of tendering
  101 Interpretation ......................................................................... 132
  102 Issue of documents ................................................................ 132
  103 Tenderers to inform themselves .............................................. 132
  104 Ambiguities in Tender Documents ......................................... 132
  105 Submission of tenders ............................................................ 133
  106 Acceptance of tender .............................................................. 134
  107 Tender evaluation .................................................................. 134
  108 Notification of acceptance ..................................................... 134
Schedule to conditions of tendering .................................................. 135
Guidelines

G Section 1 Interpretation ............................................................. 137
G Section 2 The Contract ............................................................ 138
G Section 3 Bonds ..................................................................... 140
G Section 5 General obligations ............................................... 140
G Section 6 Engineer’s powers and responsibilities ...................... 142
G Section 7 Indemnity ................................................................. 143
G Section 8 Insurance ................................................................. 143
G Section 9 Variations ................................................................. 150
G Section 10 Time for completion .............................................. 153
G Section 11 Defects liability ..................................................... 155
G Section 12 Payments ............................................................... 157
G Section 13 Disputes ............................................................... 162
G Section 15 Service of notices .................................................. 164
G Schedule 14 Agreement in respect of off-site Materials .............. 164

General aid to Valuation of Variations

Worked examples .................................................................. 167
Flow chart ............................................................................. 171

Index .................................................................................... 174
REFERENCED DOCUMENTS

In this Standard reference is made to the following:

New Zealand Standards

NZS 3916:2013 Conditions of contract for building and civil engineering construction – Design and construct
NZS 3917:2013 Conditions of contract for building and civil engineering construction – Fixed term
NZS 4202:1995 Standard method of measurement of building works
NZS 4224:1983 Code of practice for measurement of civil engineering quantities

New Zealand legislation

Arbitration Act 1996
Cadastral Survey Act 2002
Construction Contracts Act 2002
Forest and Rural Fires Act 1977
Goods and Services Tax Act 1985
Health and Safety in Employment Act 1992
Personal Property Securities Act 1999
Property Law Act 2007

Other publications

Labour Cost Index, Statistics New Zealand
Producers Price Index, Statistics New Zealand

Websites

Reserve Bank of New Zealand www.rbnz.govt.nz
Statistics New Zealand www.stats.govt.nz
New Zealand legislation www.legislation.govt.nz

LATEST REVISIONS

The users of this Standard should ensure that their copies of the above-mentioned New Zealand Standards are the latest revisions. Amendments to referenced New Zealand and Joint Australian/New Zealand Standards can be found on www.standards.co.nz.

REVIEW OF STANDARDS

Suggestions for improvement of this Standard will be welcomed. They should be sent to the Chief Executive, Standards New Zealand, Private Bag 2439, Wellington 6140.
FOREWORD

Contracts that are comprehensive but at the same time easy to understand are important in today’s technical and highly competitive building and construction environment. New Zealand’s building, construction, engineering, and infrastructure industries rely on NZS 3910 Conditions of contract for building and civil engineering construction to ensure that their contracts are suited to New Zealand’s industrial and legislative scene. The Standard contains essential commercial provisions designed to allocate risk fairly and is aligned with the requirements of the Construction Contracts Act.

NZS 3910 was first published in 1987, derived from provisional Standard NZS 623P:1984 which was a radical rewrite of the previous Standard NZS 623:1964. The Standard has undergone regular revisions over the past 25 years, most recently in 2003. Following feedback from the sector over recent years, and analysis completed by the Engineering Leadership Forum, a scoping meeting held in March 2011 identified key areas of the 2003 Standard that required review. It was decided that this ‘limited technical review’ would focus only on these key areas, resulting in a Standard that is clearer and has a reduced need for extensive special conditions.

During the development of the Standard, the committee concluded that it should be published as three tailored Standards. ‘Superseding (in part) NZS 3910:2003’ on the cover of this Standard means the revised provisions of NZS 3910:2003 are now distributed across the new suite of Standards:

(a) NZS 3910 Conditions of contract for building and civil engineering construction;
(b) NZS 3916 Conditions of contract for building and civil engineering – Design and construct;
(c) NZS 3917 Conditions of contract for building and civil engineering – Fixed term.

Together these three Standards supersede NZS 3910:2003.

The new NZS 3910:2013 contains a number of changes or new features, including:

(a) Additional provisions relating to cost reimbursement contracts;
(b) More specific provisions relating to programmes, safety plans, quality plans, and traffic management plans;
(c) Provision for advance notification of matters likely to affect Cost or time;
(d) Updated insurance provisions;
(e) Clearer provisions for valuing Variations;
(f) More workable provisions relating to payment claims and Payment Schedules;
(g) The addition of new Schedules, including forms of warranty, off-site Materials agreement and certificates of Practical and Final Completion.

In addition, the guidelines have been completely re-written and no longer have any contractual status.
OUTCOME STATEMENT

This Standard enables Principals, Engineers, and Contractors to quickly establish contractual arrangements that deliver a wide variety of building and civil engineering projects. Contracts based on this Standard will reflect fair risk allocation between the parties.
CONTRACT AGREEMENT

CONTRACT FOR ............................................................................................................ (Contract name)

CONTRACT NUMBER ................................................................................................. (Number)

THIS AGREEMENT is made on ........................................................................ 20

BETWEEN ....................................................................................................................... (‘the Contractor’)

AND ............................................................................................................................... (‘the Principal’)

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 $ .................................................................
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):

   (d) The Contractor’s tender;

   (e) Notices to tenderers (Give details with dates);

   (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):

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 ................................................................. Authorised Signatory of Contractor

SIGNED BY ................................................................. Authorised Signatory of Principal
New Zealand Standard

Conditions of contract for building and civil engineering construction

GENERAL CONDITIONS OF CONTRACT

1 INTERPRETATION

1.1 Application

This section shall apply to the Contract except where inconsistent with the context.

NOTE – See 1.3.1 on singular including the plural.

1.2 Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudication</td>
<td>As defined in the Construction Contracts Act</td>
</tr>
<tr>
<td>Adjudicator’s Determination</td>
<td>As defined in the Construction Contracts Act</td>
</tr>
<tr>
<td>Base Value</td>
<td>The value determined in accordance with 9.3.5, 9.3.6, 9.3.7, or 9.3.8, as the case may be</td>
</tr>
<tr>
<td>Comprehensive Programme</td>
<td>As defined in 5.10.4</td>
</tr>
<tr>
<td>Contract</td>
<td>The documents referred to in the Contract Agreement as comprising the Contract, or the documents which constitute the Contract under 2.6.1</td>
</tr>
<tr>
<td>Contract Agreement</td>
<td>The written agreement for the fulfilment of the Contract signed by the Principal and the Contractor</td>
</tr>
<tr>
<td>Contract Price</td>
<td>The sum provided in the Contract as payable for the completion of the Contract Works calculated in accordance with 2.2, 2.3, or 2.4 as applicable, subject to such adjustments as are provided for in the Contract</td>
</tr>
<tr>
<td>Contract Works</td>
<td>The works including Temporary Works to be executed in accordance with the Contract</td>
</tr>
</tbody>
</table>
NZS 3910:2013 Conditions of contract for building and civil engineering construction

This is a free sample only.

Purchase the full publication here: https://shop.standards.govt.nz/catalog/3910%3A2013%28NZS%29/view

Or contact Standards New Zealand using one of the following methods.

**Freephone:** 0800 782 632 (New Zealand)
**Phone:** +64 3 943 4259
**Email:** enquiries@standards.govt.nz