

**AUSTRALIAN STANDARD
CONDITIONS OF
CONTRACT—OVERVIEW
OF AS4000 SUITE**

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From its origins in the 1990 'No Dispute'³ report, Standards Australia produced AS2124–1992 General Conditions of Contract and the successful design and construct contract AS4300–1995.

'No Dispute' outlined best practice in the preparation of documents for tender, calling tenders and selecting contractors, as well as the contents of the contract itself. It advocated other improvements such as the adoption of alternative project procurement strategies, quality assurance and alternative dispute resolution practices such as mediation, conciliation etc.

'No Dispute' advocated that a balanced risk allocation should be incorporated into conditions of contract. It adopted the risk allocation principles first espoused by international construction lawyer Max Abrahamson in the 1970's where he suggested five basic principles in order to achieve a fair risk allocation between the competing commercial interests of the principal and the contractor. Abrahamson submitted that the best way of reducing claims and disputes involving building and construction projects was to allocate risk to that party:

- (1) which can control the risk;
- (2) which can transfer the risk, for example, through insurance, where it is economically beneficial to deal with the risk in this fashion;
- (3) which will gain the preponderant economic benefit of controlling the risk;
- (4) where it is in the interests of efficiency, including planning, incentive and innovation; and
- (5) upon which the loss will fall in the first instance if the risk eventuates and it is not practicable, or there is no reason under the above principles to cause expense and uncertainty by attempting to transfer the loss to another.

'No Dispute' summarised these principles as 'a party to a contract should bear a risk where that risk is within that party's control'. In consequence 'a principal should not normally ask the contractor to price unquantifiable risks within the control of the principal'.

AS2124–1992 in turn led to the better formatted and structured AS4000–1997 General Conditions of Contract while still retaining the same fundamental risk allocation as in the AS2124 document.

'The general philosophy in the preparation of AS4000–1997 was that first, AS2124–1992 was to be followed as far as risk allocation was concerned unless clearly it was felt that the risk allocation was not correct or the drafting was deficient, secondly, that purely administrative procedures be removed as far as possible, and thirdly, that ambiguity be removed and the documents be redrafted in clear English to improve the conciseness and integrity of the document'.⁴

'AS4000–1997 in many respects breaks new ground in the way that general conditions of contract are prepared by Standards Australia. AS2124–1992, its predecessors and the suite of contracts derived from them have traditionally not only set out the obligations of the parties to each other, i.e. what each party is to do under the contract, but how they are to do it'.⁵

Even though both documents have the same substantive risk allocation, AS4000–1997, by its new Standards number, reflects the fact that it is not an amended or updated version of AS2124 but in reality an entirely new contract document.

AS4000–1997:

- uses a much more readable font and page presentation;
- contains less than half the words contained in AS4124–1992;
- makes for much greater use of the Annexure to allow the parties to

document their specific requirements; and

- uses in the Annexure extra items, better cross reference to the text and, where appropriate, has pre-set/printed default provisions.

To aid in the understanding and readability of the various documents, some particular expressions have been abbreviated. *Work under the Contract* that would have otherwise occurred over 80 times in AS4000–1997 has been abbreviated to *WUC*. *Extension of Time* has been abbreviated to the acronym *EOT* and *Work under the Subcontract* (AS4901–1998) becomes *WUS*.

Contract Type

Traditional Construct Only

Consultants

Design and Construct

The suite of contracts uses italics throughout the text where defined terms are used.

Because AS4000–1997 and its associated suite have been written in terms primarily to identify the rights and obligations of the parties to each other and not to set out administrative procedures, a particularly comprehensive (647 pages) administration manual has been prepared for AS4000–1997 (HB410–2000).

The further benefit of industry using a suite of contracts based on AS4000–1997 means that industry users of any one of the documents will probably have:

- a better understanding of consistent terminology, as appropriate, throughout the documents;
- a better understanding of risk allocation, as appropriate, throughout the contracts;
- better documentation of alternative forms of procurement used by industry;
- minimisation of industry training needs; and
- consistency of project administration, documentation and practices.

The whole suite of documents (and related documents) includes:

Documentation

AS4000–1997: General Conditions of Contract

Between principal and contractor.

Administered by superintendent.

General conditions of contract for construct-only projects of a major nature. The principal has already designed the project and the contractor is to construct the project.

AS4901–1998: General Conditions of Subcontract

Between contractor and subcontractor (back to back with AS4000–1997).

Administered by the subcontract superintendent.

Provides a set of compatible subcontract conditions involving work on projects where AS4000–1997 is in use as the head contract between the contractor and the principal.

AS4122–2000: General Conditions of Engagement for Consultants

Between client and consultant.

Administered by client.

Intended for use in building, construction and engineering but can also be used in a broader range of fields.

[Not a part of AS4000–1997 suite of contracts].

AS4902–2000: General Conditions of Contract for Design and Construct

Between principal and contractor.

Administered by superintendent.

Provides a set of contract conditions that are consistent with AS4000–1997 but where the contractor is required to design as well as to construct the project.

AS4903–2000: Subcontract Conditions for Design and Construct

Between main contractor and subcontractor.

Administered by subcontract superintendent.

Provides a set of compatible subcontract conditions where AS4902–2000 is in use as the head contract between the main contractor and the principal.

	<p>AS4904–2004: Consultant’s Agreement (design and construct)(nyp)⁶ Between client and consultant. Administered by the client. Provides a set of compatible contract conditions where the head contract is AS4902–2000 and the consultant is engaged by the contractor to do the design. The contract can also be used where the consultant is engaged by the subcontractor to do the design (the subcontractor being engaged under AS4903–2000).</p>
Minor Works	<p>AS4905–2002: Minor Works—Contract Conditions (superintendent administered) Between principal and contractor. Administered by the superintendent. Provides a set of compatible contract conditions where a contractor is engaged to carry out certain parts of work on a project. This contract is suitable where the work is of limited complexity or size and does not require a bill of quantities.</p> <p>AS4906–2002: Minor Works—Contract Conditions (principal administered) Between principal and contractor. Administered by the principal. This contract has the same application as AS4905–2001 and is of use where there is no superintendent to administer the contract.</p> <p>AS4949–200: Work Order Between principal and contractor. Administered by principal. A simple work order/purchase order for use in small/simple works.</p>
Supply	<p>AS4910–2002: General Conditions of Contract for Supply of Equipment with Installation Between purchaser and contractor. Administered by superintendent. Provides a set of contract conditions for the supply and installation of major items of equipment.</p> <p>AS/NZS4911–2003: General Conditions of Contract for Supply of Equipment without Installation Between purchaser and supplier. Administered by principal. Provides a set of contract conditions for the supply only of major items of equipment.</p> <p>AS4912–2002: General Conditions of Contract for Periodic Supply of Goods Between the purchaser and supplier. Administered by purchaser. Provides a set of contract conditions where the supply of goods is required on a long term basis.</p>
Management	<p>AS4915–2002: Project Management—General Conditions Between principal and project manager. Administered by principal. Provides a set of contract conditions for project management delivery systems.</p> <p>AS4916–2002: Construction Management—General Conditions Between principal and construction manager. Administered by principal. Provides a set of contract conditions where the principal engages a construction manager to manage trade contracts.</p>

Asset Management (OB/12)

AS4917–2003: Trade Contract

Between principal and trade contractor.

Administered by construction manager.

Provides a set of contract conditions for use by trade contractors (in their contract with the principal) with a construction manager acting as agent for a principal under AS4916–2002.

AS4919–2003: General Conditions of Contract for the Provision of Asset Maintenance and Services (superintendent administered)

Between principal and contractor.

Administered by superintendent.

Provides a set of contract conditions for the service and maintenance of assets. This contract is to be administered by a superintendent.

AS4920–2003: General Conditions of Contract for the Provision of Asset Maintenance and Services (principal administered)

Between principal and contractor.

Administered by principal.

Provides a set of contract conditions for the service and maintenance of assets. This contract is suitable where there is no superintendent to administer the contract.

AS4921–2003: General Conditions of Contract for the Provision of Asset Maintenance and Services (short version)

Between principal and contractor.

Administered by principal.

Provides a set of contract conditions suitable for small scale assets.

Related

AS4120–1994: Code of Tendering

Between all industry players.

Sets standards expected.

[Not a part of AS4000–1997 suite of contracts].

AS4121–1994: Code of Ethics and Procedures for Selection of Consultants

Between all industry players.

Sets ethics and obligations of principal and consultants in the procurement of professional services.

[Not a part of AS4000–1997 suite of contracts].

REFERENCES

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3. 'No Dispute—Strategies for Improvement in the Australian Building and Construction Industry', May 1990. A report by NPWC/ NBCC joint working party.

4. 'Standard Conditions of Contract', December 2000, *Building and Construction Law* Vol 6 No 6 at p415.

5. HB140–2000: Administration manual for AS4000–1997: General Conditions of Contract at p(iii).

6. (nyp) = not yet published

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