[***Guidance Note: In its standard form this Minor Works Contract is suitable for simple lump sum or schedule of rates works on greenfield sites. Where there are brownfield sites or the Contractor will be required to interface with other works packages on a Site, substantial amendments may be required such that this Minor Works Contract may not be a suitable base.***]

[***Guidance Note: This Minor Works Contract includes clauses for Local Jobs First Standard projects only, Social Procurement Framework and Working for Victoria if these policies apply to the Contract.]***

[***Guidance Notes (located throughout this document) and items that you need to complete are shown in yellow shading. Ensure you remove guidance notes before releasing this document.]***

**Victorian Public Sector**

**General Conditions of Contract for**

**Minor Works**

**(VPS MWC June 2023)**

**Model clauses**

[***These model clauses may be inserted into the VPS Minor Works Contract (June 2023) only. Clause cross references have been drafted for this agreement only.***

Model clauses have been developed for the Victorian Public Construction Contracts to address commercial situations that arise infrequently or respond to unusual project circumstances. The clauses have been approved by the Secretary to the Department of Treasury and Finance (DTF) for use with the applicable Victorian Public Construction Contract.

These model clauses either replace existing clauses, amend existing clauses or are additional clauses depending on the specific issue being addressed. Use of these model clauses by delivery agencies is optional and does not require the approval of DTF.

Using model clauses from the Clause Bank provides a common Victorian public sector position on each matter, consistent with the use of standard form construction contracts.

Although use of these model clauses will take them into the public domain, they should only be adopted by Agencies in particular situations, rather than becoming the Agency’s standard position.

**Revision history for this agreement is listed on the cover page of the terms and conditions for the Agreement.**

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**LIMITATION OF LIABUILITY**

***Refer to Contracting Practice Note Limitation / Exclusion of Liability for issues to consider when using this clause. This Practice Note is available on request from*** ***Construction Policy Unit******. Note that while this Contracting Practice Note has been drafted for AS4300-1992 with VPS Special Conditions, the issues raised should be considered here also.***

***If you use this clause, you must also insert the applicable item in the Annexure.***

***At the heading 19, remove the words ‘Not used’. Insert this clause at the heading 19.***

# 19 LIMITATION OF LIABILITY

### This clause 19 only applies if Item 28 states that it applies.

### Subject to clause 19(c), the aggregate liability of the Contractor to the Principal arising out of or in connection with the Contract, the work under the Contract or the Works must not exceed the amount set out in Item 28.

### The limitation of liability under clause 19(b) does not apply to any liability of the Contractor arising out of or in connection with:

#### claims by any person against the Principal in respect of personal injury, death, loss or damage to any property or any other third party liability;

#### a failure by the Contractor to effect and maintain the insurances required to be effected and maintained by the Contractor under the Contract;

#### events or circumstances in respect of which insurance proceeds are available or would have been available under insurance required to be procured by the Contract in relation to those events or circumstances but for:

##### a failure of the Contractor to obtain or maintain the insurances (for which it is responsible) in accordance with this Contract;

##### a failure by the Contractor to claim under the relevant insurances (or comply with the claim procedures under the relevant insurances); or

##### the Contractor not complying with any provision, obligation or duty owed under the relevant insurance policy (including the Contractor’s duty to disclose);

#### a breach of the Contractor’s obligations under clauses 36 or 37;

#### a breach of the Contractor’s obligations under, or the liability of the Contractor under the indemnities set out in clause 18;

#### the wilful misconduct, wilful default, wilful neglect, gross negligence, fraud or criminal acts or omissions of the Contractor or the employees or agents of the Contractor, or any act or omission of the Contractor or the employees or agents of the Contractor which gives rise to a statutory penalty or fine;

#### any amount which the Contractor recovers, or would have recovered but for an act or omission of the Contractor, from a third party in connection with a claim;

#### any liability that cannot be excluded at law; or

#### the Contractor abandoning the work under the Contract.

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|  |  |  |  |
| --- | --- | --- | --- |
| 28 | 19 | Limitation of Liability - Does clause 19 apply? | Yes  No *If nothing stated, 'No' applies.*Limitation of Liability Amount: [$insert]  |

**EXCLUSION OF LIABILITY**

***Refer to Contracting Practice Note Limitation / Exclusion of Liability for issues to consider when using this clause. This Practice Note is available on request from*** ***Construction Policy Unit*** ***Note that while this Contracting Practice Note has been drafted for AS4300-1992 with VPS Special Conditions, the issues raised should be considered here also.***

***If you use this clause, you must also use the applicable item in the Annexure.***

***At the heading 20, remove the words ‘Not used’. Insert this clause at the heading 20.***

# 20 EXCLUSION OF LIABILITY

### This clause 20 only applies if Item 29states that it applies.

### Subject to clause 20(c), neither party will be liable to the other party for any Excluded Loss suffered or incurred by the other party arising out of or in connection with the Agreement.

### Clause 20(b) does not apply to the extent that:

#### liquidated damages (including any damages at common law or equity), may be construed or are intended to cover such Excluded Loss;

#### such Excluded Loss is covered by insurance proceeds that are available under insurances required by the Agreement in relation to that event or circumstance;

#### such Excluded Loss would have been covered by insurance proceeds that would have been available under insurances required by the Agreement in relation to that event or circumstance but for:

##### a failure of the Consultant to obtain or maintain the insurances (for which it is responsible) in accordance with clause 21;

##### a failure by the Consultant to claim under the relevant insurances (or comply with the claim procedures under the relevant insurances);

##### the Consultant not complying with any provision, obligation or duty owed under the relevant insurance policy (including the Consultant’s duty to disclose); or

##### the inclusion of clause 20(b);

#### such Excluded Loss is caused by the wilful misconduct, wilful default, wilful neglect, gross negligence, fraud or criminal acts or omissions of the Consultant or the employees or agents of the Consultant;

#### the Consultant recovers, or would have recovered but for an act or omission of the Consultant, an amount from a third party arising from any claim made in connection with the Agreement;

#### such Excluded Loss cannot be excluded at law; or

#### losses identified in Item 29.

### For the purposes of this clause 20 'Excluded Loss' means any:

#### loss of business or production;

#### loss of actual or anticipated profit or revenue; and

#### loss of business reputation.

|  |  |  |  |
| --- | --- | --- | --- |
| 29 | 20 | Exclusion of liability - Does clause 20 apply?  | Yes  No *If nothing stated, 'No' applies.*Other losses excluded from limitation of liability: [*Insert*] |