

Standards Australia Minor Works Contract Conditions - AS4305-1996

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Standards Australia's AS4305-1996, Minor Works Contract Conditions, was published on 5 July 1996. The document is, in essence, a derivative of AS2124-1992 but it is pointed out in the document that it is not to be used as a short form of AS2124-1992. The Conditions do not deal with some risks, obligations and administrative matters which are dealt with in the more expansive AS2124, while other matters are dealt with in a different manner to AS2124 due to the limited scope of the projects to which these new conditions apply.

It is recommended by Standards Australia that this form of general conditions only be used for projects of a simple nature and up to a value of \$250,000. Of course, the dollar limit should not necessarily be the only factor considered in selecting AS4305 as the appropriate set of general conditions of contract.

The following is a comparative commentary on AS4305 when considered against AS2124. The commentary is intended to raise matters for consideration and is not intended to be comprehensive.

There are some administrative differences between AS4305 and AS2124. There is no separate document known as a Formal Instrument of Agreement. There is instead an execution page which is signed onto by the parties. There is, accordingly, no clause dealing with the Formal Instrument of Agreement. There is also no allowance for special conditions in a schedule at the rear of the general conditions. This does not prevent attachment of special conditions as necessary. Furthermore, documents relating to the tender process are not included, nor is a preferred form of unconditional undertaking. The Annexure of contract details is retained. It is the author's view that AS4305's inclusion of the Contract Sum in the Annexure to the general conditions is an improvement on AS2124. Since the Formal Instrument of Agreement is not used, the documents forming the Contract are now listed in the Annexure.

The general structure of AS4305 does not expressly contemplate:

- the use of Bills of Quantities (clause 2 does contemplate schedules of rates with quantities);
- selected and nominated subcontractors;
- provisional sums;
- dayworks;

- direct involvement of the Principal in payment of workers and subcontractors; and
- separable portions of the work.

For smaller work these matters may still be relevant. If either party wishes to have rights in respect of these aspects then AS2124 should be considered or some special conditions may be required. AS4305 is, like AS2124, structured around the existence of the Superintendent.

The most important consideration in determining the suitability of AS4305 for use on your project is that of risk allocation. Generally, risk allocation is similar to that of AS2124. However, very importantly latent conditions is not dealt with. Accordingly, as a general principle, the risk of latent conditions lies with the Contractor. If the Contractor does not want to carry this risk an AS2124 type clause (clause 12) should be considered. There is no contractual requirement that the works are carried out by the Contractor in accordance with statutory requirements. The Principal in AS4305 does not have as extensive contractual entitlements to involve itself, through the Superintendent, in aspects of removal of materials and plant from site or the manufacturing and supply processes, quality process and testing. On specialised work this may be important. There is no suspension right available to the Principal, although the Principal can take work out of the hands of the Contractor.

Finally, several protections available to the Principal in AS2124 are not available in AS4305. There is no general time bar to claims not covered by specific time bars, the Principal has no set off right in relation to debts nor does it have an entitlement to effect insurance (for which the Contractor is responsible) at the cost of the Contractor as a debt due. The Principal does not have the entitlement to approve/reject the Contractor's subcontractors. Last, but by no means least, under AS4305 there is no obligation on the Contractor to carry out variations (which are within the scope of the Contract) as directed by the Principal.

As can be seen there are a number of considerations to be taken into account before adopting AS4305. This is, of course, the case with any standard form set of contract conditions.

AS4305-1996 can be obtained in hard copy from Standards Australia.