



Major Works Contract

Guidance Note

The Major Works Contract (the **Contract**) has been developed by the New Zealand School Property Agency (**NZSPA**) for the engagement of contractors for high-value construction projects. It is suitable for projects led by the Board of Trustees (**Board**). These guidance notes, together with the drafting notes in the Contract, are intended to provide guidance to Boards and to those managing projects on their behalf.

When to use the Major Works Contract

Type of work:	All types of construction/building work (which could include renovations, refurbishments, new-builds, demolition, landscaping, remediation projects, work that requires a building consent and/or work that could compromise the weather-tightness of an existing building).
Value of work	Over \$1,000,000 excluding GST and disbursements.

Overview of the Major Works Contract

The Major Works Contract is based on the NZS 3910:2013 Conditions of Contract for Building and Civil Engineering Construction, which is a standard-form contract that is widely used in the New Zealand construction industry.

Please note that the Contract does not include a copy the NZS 3910:2013 General Conditions of Contract, which you will need in order to fully understand and administer the Contract. You can purchase a copy of NZS 3910:2013 from the NZ Standards website.

The Contract is made up of the following parts:

- **Contract Agreement:** This is the front section of the Contract. It lists the documents that form part of the contract, along with the “signature section”.
- **Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract:** This section requires you to fill-in details about your project.

- **Schedule 2 – Special Conditions of Contract – Other Conditions of Contract:**
This section sets out the NZSPA’s amendments to the NZS 3910:2013 General Conditions of Contract.
- **Other Appendices and Schedules:** These set out standard NZSPA requirements, along with template warranty forms and other documents.

When should you start preparing the Contract?

A draft copy of the Contract (including details of the work you require) should be prepared and issued as part of the quoting process. This will give the Contractor an opportunity to familiarise themselves with the terms of the Contract and enable them to more accurately prepare their quote.

The Contract should be signed before the Contractor starts work.

Preparing a Major Works Contract

Before preparing the Contract, check that you have the most up to date version of the Contract available from:

<https://www.schoolproperty.govt.nz/property-projects/procurement-process-for-school-led-property-projects/step-4-award-the-contract>

There are certain key details that you need to cover-off in the Contract (even if you know and trust the person or company who you are engaging to do the work). Some of these key details are as follows.

The Principal:	The “Principal” is the legal entity who is engaging the Contractor to carry out the Contract Works. On Board-led projects, the Principal is the Board.
The Contractor:	The Contractor is the legal entity who you are engaging to carry out the Contract Works. It is important to identify the Contractor in the Contract by their full legal name to ensure there is no room for doubt about who the Contractor is. If the Contractor is a company (or some other legal entity such as a registered Limited Partnership) then their full legal name will be the name they have registered with the New Zealand Companies Office. You may be able to find their registered name by searching the New Zealand Companies Office website at: https://companies-register.companiesoffice.govt.nz/

The Engineer	The Major Works Contract requires a high degree of contract administration, so it requires the Principal to appoint an “Engineer” to administer the day to day running of the Contract. The Engineer has a number of important responsibilities, which include assessing variation claims and payment claims, providing directions to the Contractor, issuing completion certificates and making determinations to resolve disputes. To properly perform their role, the Engineer needs to be an independent and appropriately qualified construction professional. They are usually an engineer, architect, quantity surveyor or project manager.
The Contract Works:	The Contract Works are the works that are to be carried out by the Contractor under the Contract. You will need to include drawings and specifications in the Contract to describe the Contract Works in detail.
Contract Price:	This is the amount you have agreed to pay for the Contract Works. You are required to specify this amount in the Contract Agreement. Your Contract should also include a detailed breakdown of the Contract Price (this is called the “Schedule of Prices”).
Commencement Date & Due Date for Completion:	In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you are required to insert a date for Possession of the Site and a Due Date for Completion. The date for Possession of the Site is the date when you will make the site available to the Contractor to start the Contract Works. The Due Date for Completion is the date by which the Contractor must achieve Practical Completion (see below for an explanation of what this means). It is important that both these dates are clearly recorded in the Contract.

Who can sign the Contract?

Only the Board (or someone formally authorised by the Board, at a Board meeting) can enter into a contract on behalf of the school.

When do we pay the Contractor?

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you are required to select one of several payment arrangements (e.g. monthly payments, or payment upon Practical Completion). Your chosen payment arrangement will determine when the Contractor can submit payment claims for the work they have done.

Retentions

Under the Contract, the Principal is entitled to retain a percentage of each payment as a kind of security to ensure that the Contractor finishes the Contract Works and fixes defects as required during the Defects Notification Period (see below for an explanation of what this is).

The percentage to be retained is stated in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract:

- 5% on the first \$200,000, and
- 2.5% on the next \$800,000, and
- 0.87% on amounts in excess of \$1,000,000, and
- With a maximum total retention when aggregated of \$500,000, and
- With a defects liability retention of 100% of the total retention

The retentions must be paid to the Contractor following the end of the Defects Notification Period (see below for an explanation of what this is).

Practical Completion

Under the Contract, the Contractor has to achieve “Practical Completion” by the Due Date for Completion.

Practical Completion is when the Contract Works are complete except for minor omissions and minor defects:

- (a) Which, in the opinion of the Engineer, the Contractor has reasonable grounds for not promptly correcting;
- (b) Which do not prevent the Contract Works from being used for the intended purpose; and
- (c) Rectification of which will not prejudice the convenient use of the Contract Works.

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you can require the Contractor to provide various certificates and other documents prior to Practical Completion (e.g. producer statements, a code compliance certificate (CCC), a certificate of public use (CPU) and a weathertightness warranty).

The Contractor has to notify the Engineer when it believes Practical Completion has been achieved. If the Engineer agrees, the Engineer issues a Practical Completion Certificate in the form provided in Schedule 15.

Once Practical Completion is achieved, the Contractor’s bond is released (if a bond has been provided - see below).

Delays to completion - Liquidated damages

If the Contractor does not achieve Practical Completion by the Due Date for Completion, the Principal may be entitled to “liquidated damages” at the rate stated in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract for each day that the Contract Works remain incomplete.

Defects Notification Period

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you are required to specify the duration of the Defects Notification Period (**DNP**). The DNP is the period during which the Contractor is required to return to the site and correct any minor outstanding work or defects that come to light during this time.

The DNP begins when the Practical Completion Certificate is issued by the Principal.

The standard duration for NZSPA Contracts is 12 months. However, you should consider whether there are project-specific or school-specific factors that might make a different DNP more appropriate for your Contract.

Final Completion

At the end of the DNP, the Engineer issues a Final Completion Certificate if the Contractor has fulfilled its obligations.

Limit to the Contractor’s liability

The Contractor’s liability to the Principal is limited to the amount stated in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract. This is the maximum amount of compensation or damages the Contractor will have to pay if it breaches the Contract or carries out the Contract Works incorrectly. By default, the amount is equal to the Contract Price.

In some situations, the Contractor’s liability is not limited to this amount. These situations are set out in clause 7.2.2 in Schedule 2 – Special Conditions of Contract – Other Conditions of Contract.

The limit to the Contractor’s liability and the exclusions set out in clause 7.2.2 are standard for NZSPA-led projects and should be appropriate for most Board-led projects. Nevertheless, you should carefully consider whether the standard limit and exclusions are appropriate for your school and your project.

Design responsibility

If the Contractor is required to design any parts of the Contract Works, you should clearly identify those parts in the space provided in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract. Doing so will help avoid disagreements about who is

responsible for producing the drawings and other documentation for those parts of your project.

Note that the Contract is not intended to be used for “design and contract” projects, where the Contractor is required to design the bulk or all of the Contract Works. The NZSPA has a different version of the Major Works Contract (based on the NZS 3916:2013 form of contract) that Boards can use for such projects instead. You should contact your School Property Advisor if you need a copy of this.

Note that if you are using the “design and construct” version of the Major Works Contract, the space referred to above is not included in Schedule 1 and does not need to be completed.

Subcontractors

Generally, the Contractor is allowed to use any subcontractors they have listed in their tender. You should review the subcontractors listed in their tender to ensure you are comfortable with who they have proposed. The Contractor is not allowed to subcontract the whole (or substantially the whole) of the Contract Works without your consent. The Contractor is responsible for all work carried out by its subcontractors.

There are also some specific types of subcontractors:

A “**Nominated Subcontractor**” is a subcontractor who has been selected by the Principal (i.e. where the Principal requires the Contractor to use a specific subcontractor for a particular part of the Contract Works). If you require the Contractor to use a Nominated Subcontractor, you will need to insert their details in the space provided in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract. However, you should only use Nominated Subcontractors if it is essential to your project – the Principal can be liable if the Nominated Subcontractor causes the Contractor to incur costs or delays.

A “**Key Subcontractor**” is a subcontractor who the Contractor cannot replace without the Principal’s consent. This can be useful in situations where the Contractor has identified a particularly desirable subcontractor or supplier that you especially want them to use. All subcontractors who are to be Key Subcontractors must be clearly identified in the space provided in Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract.

Contract works insurance

The NZSPA provides contract works insurance for state schools at a minimal cost. This insurance covers accidental loss and damage to the works being undertaken (including temporary works and off-site materials, subject to certain limits specified by the policy). It does not cover damage to existing property or contents. If your project involves a building or other asset that is, or will be, owned or partly owned by the Crown, then you must use the NZSPA’s contract works insurance. If the project is wholly funded by the Board on a school site, you can choose to use the NZSPA’s contract works insurance at no cost to the Board.

To obtain contract works insurance for your project, you must submit details of your construction contract via the NZSPA's insurance broker's website:

<https://www.schoolproperty.govt.nz/property-projects/contracts-and-insurance/contract-works-insurance-for-school-property-projects>

Insurance of existing structures

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you are required to list any existing buildings that you have agreed to insure against construction-related damage. If you agree to list any buildings, you should let your insurance provider know about the construction work and check that your policy will cover damage resulting from construction activity.

Note that you should only list Board-owned buildings; Crown-owned structures will not generally be covered by the Board's building insurance so should not be listed.

Contents insurance

Under the Contract, the Principal is required to insure its belongings in any structures that will be directly affected by or in the vicinity of the Contract Works. You should ensure that your insurance provider is made aware of the construction work and that your insurance policy covers damage resulting from construction activity.

Weathertightness Warranty

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you can require the Contractor to provide a weathertightness warranty. You should require a weathertightness warranty if the Contract Works could cause weathertightness problems if they are not carried out properly (such as where the Contract Works involve changes to the “building envelope” of a structure).

Subcontractor warranties

The Contractor is required to obtain materials and workmanship warranties from their subcontractors. The required warranty periods are set out in Appendix C and a template warranty form is prescribed in Schedule 13.

Contractor's bond

In Schedule 1 – Special Conditions of Contract – Specific Conditions of Contract, you are required to state whether the Contractor is required to provide a Contractor's bond. A Contractor's bond is a kind of formal assurance, given by a third party called a “surety”, that the Contractor will fulfil its obligations under the Contract. If the Contractor does not fulfil its obligations, the Principal may be entitled to receive a sum of money from the surety.

You must require the Contractor to provide a Contractor's bond if the value of the project is more than \$2 million.

Where the Contractor is required to provide a Contractor's bond, it must be for an amount equal to 5% of the Contract Price and it must be in the form prescribed in Schedule 3. The surety must be a New Zealand-registered bank – any other surety requires approval from the Principal.

Asbestos handling, health and safety & weathertightness design requirements

The Contract includes standard NZSPA requirements for:

- **Asbestos Handling:**
<https://www.schoolproperty.govt.nz/day-to-day-management/hazardous-materials-and-substances/managing-asbestos-in-schools>
- **Health and safety**
<https://www.education.govt.nz/education-professionals/schools-year-0-13/health-and-safety/health-and-safety-responsibilities-schools>
- **Weathertightness design**
<https://www.schoolproperty.govt.nz/designing-school-property/requirements-for-school-design-in-new-zealand/weathertightness-design-standards-for-school-buildings>

Conflicts of Interest

The Contractor and all members of the Board are required to disclose any actual or likely conflicts of interest in writing before signing the contract. A conflict of interest includes any family or business relationship between the Contractor (including the Contractor's directors and senior managers) and any member of the Board or any staff at the school.

Consultants

If you are using the Major Works Contract, it is likely that you will also be appointing consultants to assist you with your project (including the Engineer). Consultants should be engaged using the NZSPA's template contracts for consultancy services. These templates are available on the NZSPA's website:

<https://www.schoolproperty.govt.nz/property-projects/procurement-process-for-school-led-property-projects/step-4-award-the-contract>

Storing your signed Contract

You should safely store the signed Contract (and all associated documents and correspondence) in case you discover any defects in the Contractor's work at a later date.

Questions?

Any queries about the Contract should be directed to the School Property Advisor in the first instance. If legal advice is required, the School Property Advisor will provide guidance on obtaining legal advice through the New Zealand School Trustees Association.