

## Clause 4: The Contractor

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The main changes to Clause 4 are:

- The requirement in Sub-Clause 4.1 [*Contractor's General Obligations*] that the fitness for purpose obligation must be defined in the Employer's Requirements (and not elsewhere in the Contract) and in the absence of a definition for purpose, the obligation will be "ordinary purpose";
- The ability in Sub-Clause 4.2 [*Performance Security*] for the Employer to instruct the Contractor to increase or decrease the Performance Security in the event of Variations that result in an accumulative increase or decrease by more than 20% of the Contract Price.
- In Sub-Clause 4.3 [*Contractor's Representative*], the Contractor's Representative shall be responsible for issuing and receiving Notices and other communications under Sub-Clause 1.3.
- In Sub-Clause 4.4 [*Subcontractors*], it is now possible for a percentage to be included in the Contract Data setting out the limits of subcontracting.
- Sub-Clause 4.5 [*Nominated Subcontractors*] has been expanded but restricted to circumstances in which Plant, Materials, works or services are to be purchased by the Contractor from a nominated subcontractor under Sub-Clause 13.4(b) [*Provisional Sums*].
- In Sub-Clause 4.6 [*Co-operation*], the 2017 edition affords the Contractor a claims opportunity if it suffers delay and/or incurs Cost.
- Sub-Clauses 4.7 [*Setting Out*]; 4.8 [*Health and Safety Obligations*] and 4.9 [*Quality Management and Compliance Verification Systems*] retain the same character as the 1999 edition but have become enhanced and more prescribed in the 2017 edition.
- As with the 1999 edition, Sub-Clause 4.10 [*Use of Site Data*] and 4.12 [*Unforeseeable Physical Conditions*] need to be considered together. Important parts of Sub-Clause of 4.10 have been cut and pasted into a new Sub-Clause 2.5. There is an increased obligation to give information about the effects of climatic conditions at the Site in Sub-



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Clause 4.10(b). In relation to Sub-Clause 4.12 which hinges on the concept of unforeseeability, it should be noted that there has been a change in the timing in the definition of Unforeseeable. The benchmark of the '*date for submission of the Tender*' has been replaced by the '*Base Date*' in both the definition of Unforeseeable and in Sub-Clause 4.12.5.

- Sub-Clause 4.15 [*Access Routes*], allocates more risk to the Contractor in the 2017 edition as now the Contractor must take "all necessary measures to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel". There is a new entitlement for a Contractor to claim time and money if the extent of non-suitability or non-availability of an access route arises as a result of changes to that access route by the Employer or a third party after the Base Date.

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