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# A Guide to Construction Law in New Zealand

A comprehensive overview of construction law  
from procurement to dispute resolution

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# Topic 1: Law and contracts

## Legal overview

The New Zealand construction industry is governed by both statute and common law authorities.

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### Key statutes

#### Building Act 2004

This is the key piece of legislation regulating the building industry in New Zealand. Its primary purpose is to ensure that buildings are safe to use and do not pose a risk to people's health. The Act establishes the legal framework for the Building Code, which outlines the required performance standards for buildings and provides guidance on how to achieve compliance. The Building Act 2004 also sets out minimum mandatory warranties for building work related to household units.

#### Construction Contracts Act 2002 (CCA)

The CCA is primarily concerned with facilitating efficient payment processes between parties, given the importance of regular cash flow for Contractors. As such, the CCA:

- outlines the requirements for parties holding retentions on trust;
- establishes the adjudication process (a fast-track dispute resolution process for construction claims);
- bans "pay when paid" and "pay if paid" clauses in construction contracts; and
- sets out requirements for payment claims and payment schedules in construction contracts.

#### Health and Safety at Work Act 2015 (HSWA)

The HSWA sets the health and safety standards for work sites and controls how this standard is applied.

#### Resource Management Act 1991 (RMA)

The RMA aims to promote the sustainable management of natural and physical resources. Certain construction projects may require resource consent if they involve the development or use of these resources or activities that impact the environment. If granted, the consent will include conditions governing the particular use or activity these resources are put towards. The RMA is soon to be replaced with the Planning Act and Natural Environment Act, with the bills introduced in late 2025 and expected to fully take effect by 2029 with a transition period while councils shift to the new framework.

### Standard contract forms

#### New Zealand Standard series (NZS)

The New Zealand Standard (NZS) series of construction contracts provides the three most commonly used standard form contracts.

#### NZS 3910:2023 – Conditions of contract for building and civil engineering construction

This is a "construct-only" contract, where the Owner provides the design, and the Contractor is responsible for the construction of the project.

Standards New Zealand released the latest "construct-only" contract in 2023 with Anderson Lloyd's Lauren Whitehead serving on the review committee. The newest version introduces significant changes including the replacement and division of the role of the "Engineer to contract" (see "The Owner").

The Owner

#### NZS 3916:2025 – Conditions of contract for building and civil engineering – Design and construct

This is a "design-and-build" contract in which the Owner sets out its requirements, and the Contractor is responsible for both designing and constructing the project.

The key distinction between NZS 3910:2023 and NZS 3916:2013 lies in the design responsibilities, which are discussed in more detail in the "Design" section.

#### NZS 3915:2005 – Conditions of contract for building and civil engineering construction (where no person is appointed to act as engineer to the contract)

This is another "construct-only" contract, often used as an alternative to NZS 3910 in projects where no "Engineer" is involved (see "The Owner").

The Owner

#### NZS3902:2004 – Conditions of Contract for Building and Construction (Residential)

This is the New Zealand standard intended for small-scale residential building projects, typically where the owner is a homeowner rather than a commercial principal. The contract provides a relatively simple and balanced framework, covering payment, variations, time for completion, defects, risk, insurance, and dispute resolution, while reflecting the realities of residential construction and the more limited contract administration usually involved compared with larger NZS 3910-type projects.

# Topic 1: Law and Contracts

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## Standard contract forms (Continued)

### Registered Master Builders Association forms of contract

#### RBC1 – Residential Building Contract

This is usually used for residential construction projects. While similar to NZS 3910, RBC1 offers some unique clauses which are beneficial to Registered Master Builders. For instance, clause 46 allows for price fluctuations in a fixed price contract, while clause 92 allows for the Master Builder to substitute materials in the contract which are not reasonably procurable.

#### Subcontract Agreement

This is for use between Contractors and their Sub-contractors and is designed to link into NZS 3910/3916 as the head contract for flow-through of key obligations.

### New Zealand Institute of Architects (NZIA) forms of contract

#### Standard Construction Contract

For use between client and Contractor where the architect is engaged to administer the contract.

#### National Building Contract

For use where the architect is not contractually involved in the administration or control of the construction contract.

### Overseas construction contract forms commonly used in New Zealand

#### NEC3 and NEC4 – The British New Engineering Contracts

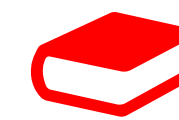
NEC3 provides a suite of engineering and construction contracts designed to make project delivery more collaborative, transparent, and proactive. It is known for its plain language drafting and emphasis on project management rather than purely legal risk allocation.

NEC3 is the third edition, amended in 2013, and includes multiple contract types including Engineering and Construction Contract (ECC), Profession Services Contract (PSC), and Term Services Contract (TSC).

It is most commonly used in the UK but has been used in some projects in New Zealand.

While NEC4 operates in a broadly similar way to NEC3, it does provide for new forms of contract (such as a Design Build and Operate Contract (DBO), the Alliance Contract (ALC), and the Facilities Management Contract (FMC). NEC4 also provides for better dispute avoidance support, early contractor involvement, and quality management.

### International Federation of Consulting Engineers – The Red, Yellow, and Silver Books



**Red Book** – this covers the construction of buildings and engineering works where the detailed design is done by the Owner. This form of contract is inappropriate if most of the works are designed by the Contractor.



**Yellow Book** – this covers electrical and mechanical plant builds, and for building and engineering works where the design is done by the Contractor. As such, the Yellow Book sets out that “design” is a contractor responsibility.



**Silver Book** – this provides conditions of Contract for Engineering, Procurement, and Construction (EPC)/Turnkey. This contract places the risk of design, construction, time, cost and performance for the works almost entirely on the contractor, with a deliberately limited role for the Employer.

## Standard construction consultancy contracts used in New Zealand

### Conditions of Contract for Consultancy Services (CCCS)

An associated long and short form contract developed by Engineering New Zealand and the Association of Consulting Engineers for the procurement and provision of professional consulting services. The short form is used for lower risk and lower value engagements whereas the CCCS is most commonly used in larger scale and more complex projects.

### Agreement for Architects Services (AAS)

This provides standard conditions of contract for engagement of architects in professional design services.

### Contract for Quantity Surveying Consultancy Services (CQSCS)

This is used by members of the New Zealand Institute of Quantity Surveyors and is intended for the engagement of Quantity Surveyors only. The Construction Contracts Amendment Act 2015 expanded the definition of “construction work” to specifically include quantity surveying services and this form of contract addresses this.

## Topic 2: Industry participants

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### The Owner

The Owner, or “Principal” in NZS contracts, or “Employer” in FIOIC contracts can be a wide range of persons, including:

- local council, a central government body or state owned enterprise;
- an incorporated or unincorporated entity, particularly in industries such as manufacturing, residential and commercial real estate, and irrigation; or
- individual persons, particularly in the case of home builds or renovations contracts.

#### Owners’ representatives and agents

In NZS contracts featuring an “Engineer,” the Engineer administers the contract, acting as both the Owner’s agent and a quasi-independent decision-maker. In the latter capacity, the Engineer is expected to make decisions impartially and fairly.

The latest NZS 3910:2023 has replaced the “Engineer to contract” role with two separate positions: a Contract Administrator, and an Independent Certifier.

Under the updated structure of NZS contracts with a Contract Administrator and Independent Certifier:

- the Contract Administrator manages the contract, acting as the Owner’s agent, overseeing day-to-day operations, and issuing “Instructions”.
- the Independent Certifier serves as an impartial decision-maker, required to act fairly and independently of both parties in making “Decisions”. The Independent Certifier is the Owner’s agent only for receiving payment claims, incorporating the Owner’s deductions into payment schedules, and issuing those schedules.

In practice, many tasks typically associated with the Owner, such as issuing and assessing variations or extensions of time, and confirming the completion of work, will be carried out by the Engineer, Contract Administrator, or Independent Certifier.

### General Rights and Responsibilities of Owners

#### Common Owner rights:

Ensure the Contractor completes the work in accordance with the specifications and drawings

Authorize variations to the work, including granting extensions of time and additional costs to the Contractor where applicable

Ensure the work is completed within the specified timeframe, with allowances for extensions of time under certain circumstances

Ensure the work is free from defects, and require the Contractor to correct any defects within a reasonable period

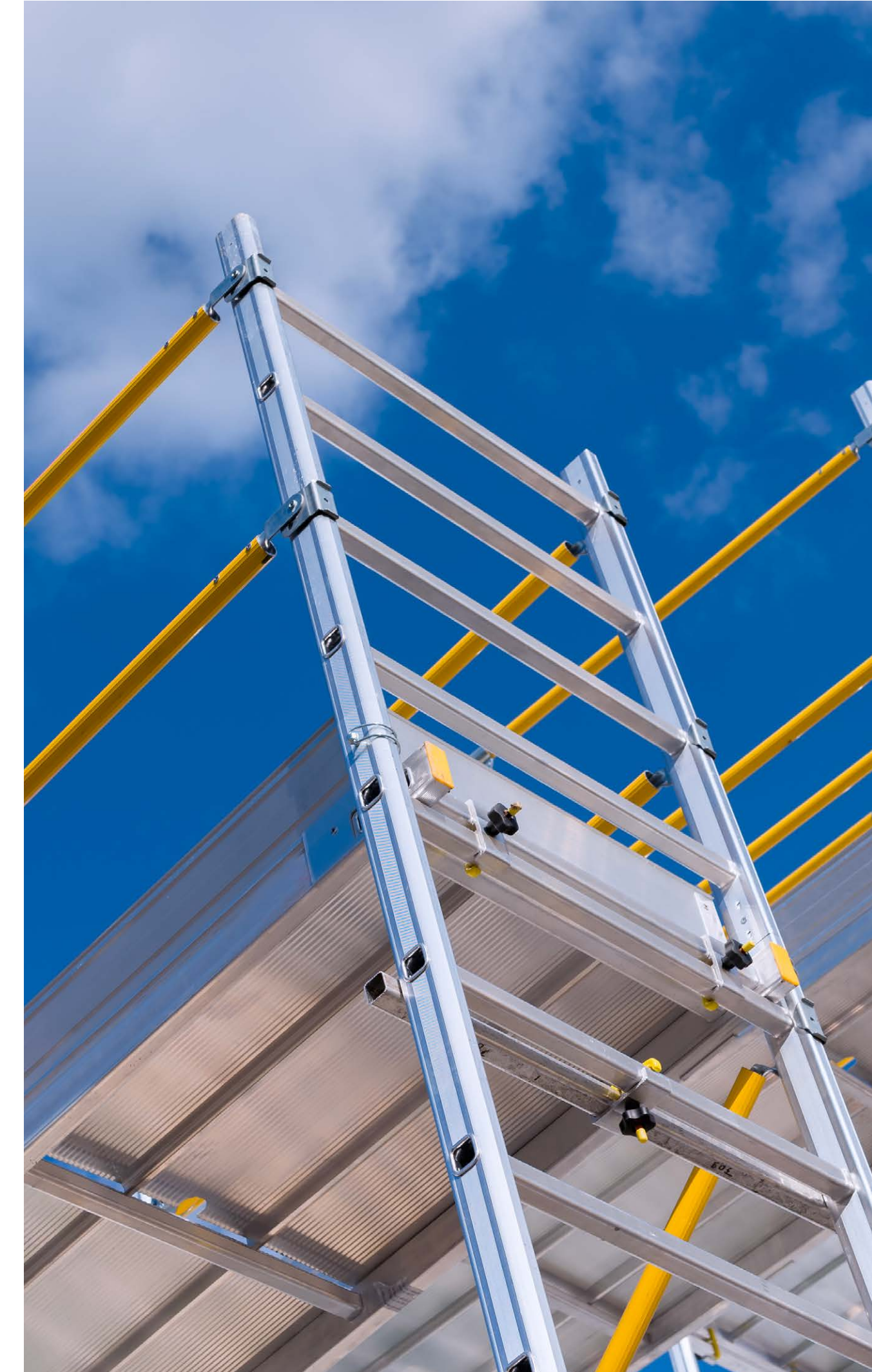
#### Common Owner responsibilities:

Define the project requirements, including providing the design and specifications where necessary – see “Design”

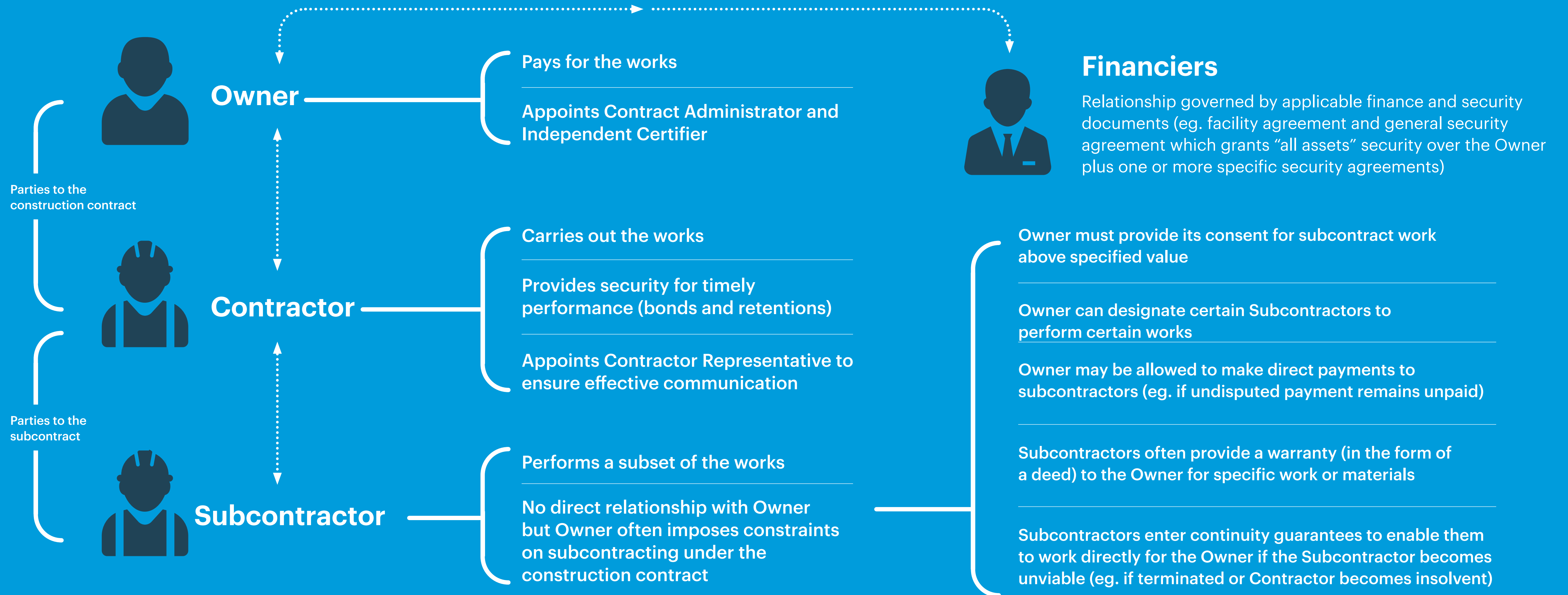
Ensure funding is in place for the project and making payments to the Contractor within the agreed timeframes

Obtain the necessary building and resource consents for the project

Provide access to the site and avoiding any interference with the Contractor’s ability to perform the work



# General Rights and Responsibilities



# Topic 2: Industry participants



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## Contractors

**Contractors in New Zealand vary widely in size and scope, ranging from large, listed corporations (both local and international) to smaller private companies. It is common for larger projects in New Zealand to involve overseas organisations, often in joint ventures with local entities.**

### Common Contractor rights:

To select the preferred methodology for performing the works, typically within defined parameters

To receive payment from the Owner within the agreed-upon timeframes

To be entitled to additional payments and extensions of time for specific events, usually those beyond the Contractor's control

To carry out the works without obstruction from the Owner or third parties

### Common Contractor responsibilities:

To carry out the works in accordance with the requirements of the contract, including any design and specification requirements, where applicable

To complete the works within the specified timeframe, subject to extensions of time in certain circumstances

To ensure the works are free from defects and to remedy any defects within a specified period after completion

## Subcontractors

Subcontractors can be local, national, or international entities, and typically specialise in specific trades.

### Common rights and responsibilities of Subcontractors

The rights and responsibilities of Subcontractors are generally similar to those between the Contractor and the Owner.

### Relationship between Subcontractors and Financiers

Financiers and Subcontractors typically do not have a direct contractual relationship.

## Personnel

Owners often require the Contractor to:

- retain key personnel, with any changes to key personnel typically requiring the Owner's approval; and
- remove unsuitable personnel, with standard form contracts allowing the Owner to request the removal of personnel due to serious misconduct, incompetence, negligence, or actions that jeopardise safety.

## Subcontracting

NZS construction contracts prohibit Contractors from subcontracting the entire scope of works or substantial portions of the scope of works (such that the entire scope of works has in effect been subcontracted). Subcontracting typically requires the Owner's consent. However, subcontracting does not absolve the Contractor from any liability or contractual obligations owed to the Owner under the contract.

## Topic 2: Industry participants



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### Financiers

Financiers for construction projects in New Zealand are typically local and international commercial banks, investment banks, and institutional investors, such as pension funds. For larger projects, it is common to have multi-financier syndicates.

#### Rights and obligations of financiers

Financiers provide financing to the Owner but are not parties to the construction contract and do not have direct obligations to the Contractor. However, they may benefit from undertakings made by the Contractor under a direct deed. Refer to the diagram on the following page.

In traditional construction financings, financiers typically secure physical assets, such as land and buildings, as well as construction contracts and other key agreements like sale contracts or leases. They may also receive guarantees from a parent company to secure repayment of financing provided to a subsidiary, or take security over shares in the Owner held by its shareholders.

In limited recourse project financings, the security package is often similar, but financiers place much greater emphasis on the cash flows generated by the completed project. They will conduct more thorough due diligence and closely monitor the construction contract and related agreements (such as completion guarantees), as the successful completion of the project is critical to unlocking cash flow.

### Designers

In New Zealand, the designer of construction projects is responsible for preparing the plans and specifications for the building work, and ensuring that the design complies with the Building Code.

There is considerable diversity in the size and nature of design consultancies operating in New Zealand. These consultancies range from large listed corporations, both local and international, to smaller private firms. They typically provide a range of architectural and engineering services required for the design of construction projects.

#### Common responsibilities and obligations of Designers

Under Section 14D of the Building Act 2004, a designer's primary statutory responsibility is to ensure that their advice, plans, and specifications, if followed, will result in building work that complies with the Building Code. This responsibility applies to all building work (as defined by the Building Act). In addition to this statutory duty, designers typically have an obligation under their design contracts to deliver designs that meet their client's brief, using reasonable care and skill.

During the design phase, the designer must also comply with the Health and Safety at Work Act 2015. This includes a duty to foresee and manage potential health and safety risks for the end users of the building. As far as reasonably practicable, this responsibility encompasses:

- ensuring that structures, plant, and substances are free from health and safety risks;
- conducting tests to confirm that the structures, plant, or substances they have designed are safe;
- providing all relevant information about their designs;
- consulting, cooperating, and coordinating with other Persons Conducting a Business or Undertaking (PCBUs);
- ensuring their designs comply with all applicable legislation.

#### Relationship between Designers, Owners, and Contractors

The relationship between the designer, Owner, and Contractor is determined by the type of construction contract in place.

In a "construct-only" contract (e.g., NZS 3910), the designer will typically have a design consultancy contract with the Owner, with no direct contractual relationship between the designer and the Contractor.

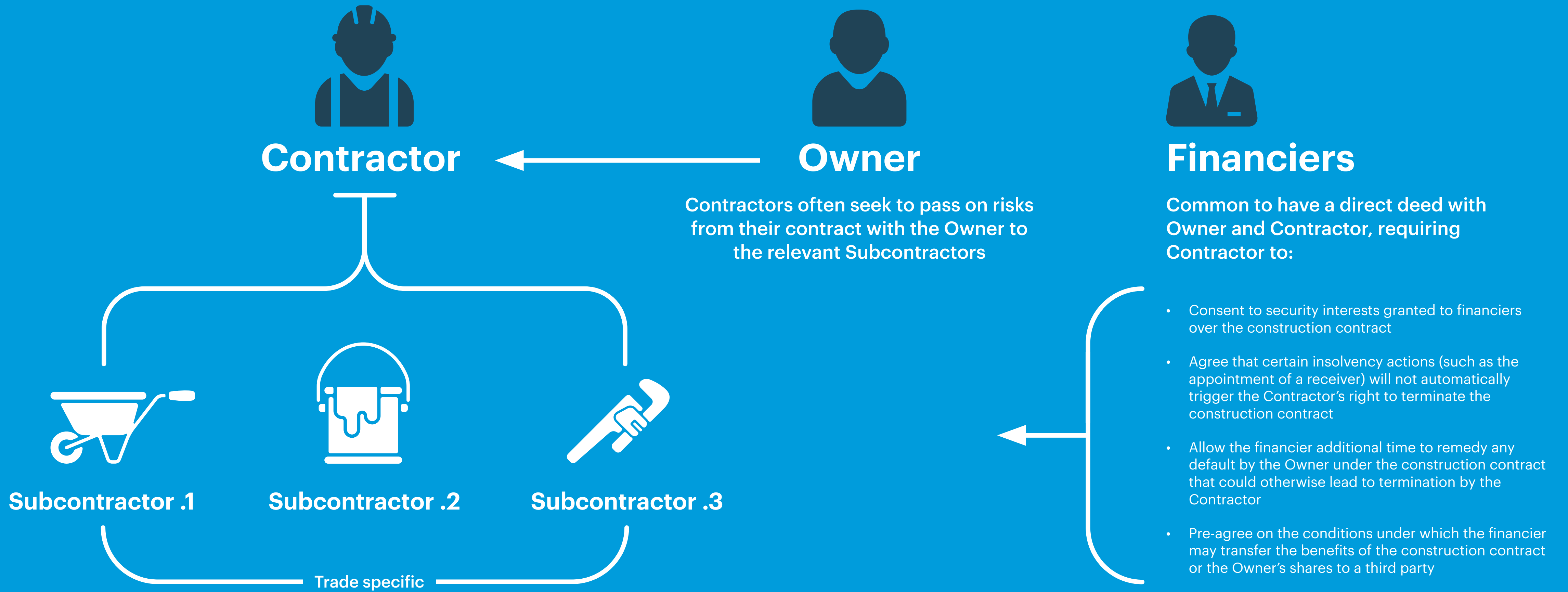
In a "design-and-build" contract (e.g., NZS 3916), the designer will have a contractual relationship with the Contractor. The Contractor often subcontracts the design work to a third-party designer based on the Owner's brief, or may use an in-house designer. The Owner does not typically have a direct contractual relationship with the designer unless a separate deed is executed between the Owner and designer.

Regardless of the contractual structure, the designer may owe a duty of care to the occupiers, Owners, and future purchasers of the building and may be liable in tort for a breach of this duty.

The frameworks for allocating design responsibilities and risks between the Owner and Contractor are covered in the "Design" section.

#### Design

# Direct Deed



# Topic 3: The Works



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## Scope

### Scope and descriptions of the scope

The scope typically comprises:

- “requirements” in a design-and-build contract, where the Owner outlines the broad parameters and minimum outcomes for the works to be performed by the Contractor; or
- “specifications” in a construct-only contract, where the Owner provides more detailed and specific instructions on what the Contractor must deliver.

Both requirements and specifications may include drawings that define the locations, dimensions, forms, and finishes required. In a construct-only contract, the drawings are usually much more detailed.

### Scope in tenders

The Owner will outline the requirements for the works (commonly referred to as the “scope” or “specifications”) during either a closed or open tender process. In many cases, the Contractor and Owner will negotiate the scope (e.g., to reduce costs) before finalizing and executing the contract.

### Scope in contracts

Once the contract is executed, the scope is typically fixed and can only be modified thereafter to the extent that the contract allows (see the “**Variations**” section).

[Variations](#)

## Designs

The two most common frameworks for allocating design responsibilities and risk in New Zealand are “construct only” and “design and construct”.

### Construct only

The Contractor is responsible for the construction method based on the design, but not for any errors or omissions in the design.

- Design risk typically rests with the Owner, except where the design pertains to the Contractor’s methodology or temporary works, for which the Contractor assumes design responsibility.
- The Owner usually allocates design risk to a designer through a separate contract. The designer’s duty is owed solely to the Owner, and the designer has no contractual obligations to the Contractor.
- NZS 3910 is commonly used for such contracts.

### Design and construct

The Contractor is responsible for both the design and construction of the works (unless the Owner has a pre-existing design, which may be novated to the Contractor).

- In this case, design risk rests with the Contractor.
- Contractors without in-house design capabilities typically subcontract the design aspects of such projects.
- NZS 3916 is commonly used for these types of contracts.

## Variations

### Instructing variations

The scope of an instructed variation is typically at the sole discretion of the Owner, and in NZS contracts, variations are usually instructed by the Engineer (or Contract Administrator). In New Zealand, contracts generally allow the Owner, Engineer, or Contract Administrator to:

- increase or decrease the quantity of work;
- omit any work (although significant omissions may be considered repudiation or grounds for termination and so must be treated with caution);
- change the character or quality of materials or work; and
- alter the level, position, dimensions, specifications, or any other part of the contract works.

Certain events or circumstances may also be considered variations, even if they do not result from an instruction by the Owner, Engineer, or Contract Administrator. Examples include unforeseen ground conditions or archaeological discoveries.

### Valuing variations

The process for valuing variations varies across different contracts. In New Zealand, particularly in NZS contracts, the valuation is typically determined using one of the following methods, in descending order of precedence:

- by mutual agreement;
- by applying the rates and prices set out in the contract;
- by applying rates and prices derived from similar rates in the contract; or
- by assessing the net cost.

If the rates do not include overheads and margins, or if the variation is valued on a net cost basis, allowances for overheads and margins are usually added.

If variations lead to an extension of time, time-related costs may apply (see the “**Delays**” section).

[Delays](#)

# Topic 3: The Works



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## Construction

The Owner's role during construction is primarily limited to providing access to the site for the Contractor and its Subcontractors. However, the Owner may need to supply supplementary information or design clarifications when requested by the Contractor.

The Contractor typically has the autonomy and primary responsibility to:

- select the appropriate construction methodology;
- source the materials and resources; and
- manage and carry out the construction works.

Subcontractors are managed by the Contractor and have a similar role to the Contractor concerning their specific subcontracted works.

## Site access and conditions

The Owner is responsible for making the site available to the Contractor by the agreed-upon date for the commencement of the works.

Responsibility and risk for geotechnical site conditions can vary significantly depending on the contract. Typically, the Owner assumes the risk for adverse conditions, unless:

- the conditions have been disclosed to the Contractor;
- the Contractor has had the opportunity to investigate the conditions prior to pricing;
- the conditions could have been reasonably foreseen by an experienced Contractor; or
- the Contractor has accepted the risk.

## Contamination

Pre-existing contamination is typically the Owner's responsibility, while the Contractor is responsible for preventing any contamination or pollution during the construction process.

Pollution and contamination are regulated under the Resource Management Act 1991, the relevant project's resource consent, and often local council guidelines.

## Archaeological finds

Archaeological discoveries, along with any delays and additional costs resulting from such discoveries, are generally the Owner's responsibility.

Archaeological finds on a construction site are regulated by the Heritage New Zealand Pouhere Taonga Act 2014, which prohibits any person from modifying or destroying a site if they know, or reasonably should have known, that the site is of archaeological significance.

## Permits

### Common permits

Common permits required throughout the building process are:

- Resource consent – authorisation to develop or use natural and physical resources or to carry out activities that may impact the environment.
- Building consent – authorisation to carry out building works in a specific manner that complies with the Building Code.
- Code compliance certificate – confirmation that, once the work is completed, it complies with the approved building consent and the Building Code.
- Certificate of public use – a temporary permit allowing public access to premises until the code compliance certificate is issued.

## Responsibility for permits and consents

Permit arrangements can vary depending on the contract, but typically:

- the Owner is responsible for obtaining the resource consent;
- the party responsible for the design obtains the building consent; and
- the Contractor is responsible for obtaining permits or licenses for temporary works, services, and the operation of machinery.

## Maintenance

Most construction contracts exclude general maintenance obligations after completion, which then become the Owner's responsibility.

Typically, the Owner will either perform maintenance work in-house or enter into separate maintenance service agreements with third parties to ensure the proper operation and upkeep of the works. The NZS 3917 fixed-term contract is commonly used for such maintenance services.

For defects in construction works occurring after practical completion, refer to the "**Defects and Defect Liability Period**" section.

[Defects and Defect Liability Period](#)

## Topic 3: The Works

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### Testing

Certain projects require key materials or equipment to undergo testing to ensure they meet contractual or regulatory requirements. The testing process can vary depending on the contract, but typically, the Contractor will notify the Owner of the date when the tests will be ready to take place. The Contractor will then carry out the tests or arrange for specialists to perform them, with the Owner having the right to attend (or send an agent to attend) the tests.

There are various types and stages of testing, including:

#### Factory acceptance tests

Tests conducted at the factory to ensure that equipment functions as expected or that materials meet specified requirements.

#### Tests on completion

Tests carried out after the works have been installed and commissioned, but before completion is certified, to ensure the works meet the standards required by the contract.

#### Tests after completion

Tests conducted to ensure the works continue to meet contract standards (e.g., ongoing reliability) and to confirm that performance guarantees specified in the contract have been met.

#### Discretionary Tests

Some contracts allow the Owner's representative to conduct tests if there are concerns about an aspect of the works. Any costs or delays resulting from these tests are typically borne by:

- (i) the Owner (if the works meet contractual requirements); or
- (ii) the Contractor (if the works fail to meet contractual requirements).

# Topic 3: The Works



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## Completion, takeover, delivery

### Completion / taking over

Most standard forms include a process for verifying or defining when the works are considered complete or taken over. In some contracts, this is a multi-stage process, typically including:

- Practical Completion – When the works are largely finished, with only minor defects or snags remaining that do not affect the use or occupancy of the works.
- Final Completion – When the works are fully complete, and all defects have either been rectified or accepted.

In construction contracts, the Owner (or more commonly, its Engineer or Independent Certifier) will usually inspect the works and issue a practical completion certificate, followed by a final completion certificate once the works meet the contractual requirements.

However, certain actions, such as the Owner taking possession or using the works before practical completion, can result in the Owner being deemed to have taken over the works.

### Delivery

The term delivery is generally used in relation to materials or equipment, and is often tied to obligations for payment, as well as the transfer or allocation of risk and title.

In New Zealand, the point of delivery is typically specified in the contract. While the International Chamber of Commerce’s Incoterms rules are not mandatory, they are commonly referenced for international deliveries.

## Defects and Defect Notification Period

Most construction contracts include a defects notification period (**DNP**), typically lasting from a few months to one or two years, during which the Contractor is obligated to remedy any snags or defects that arise. In addition to the DNP, the Owner may also require standalone warranties for defects that emerge after the DNP has ended.

Common standalone warranties often cover key materials or equipment remaining defect-free and the weathertightness of the works. NZS forms of contract typically include standard warranties as a schedule to the main items.

### Defect Notification Periods

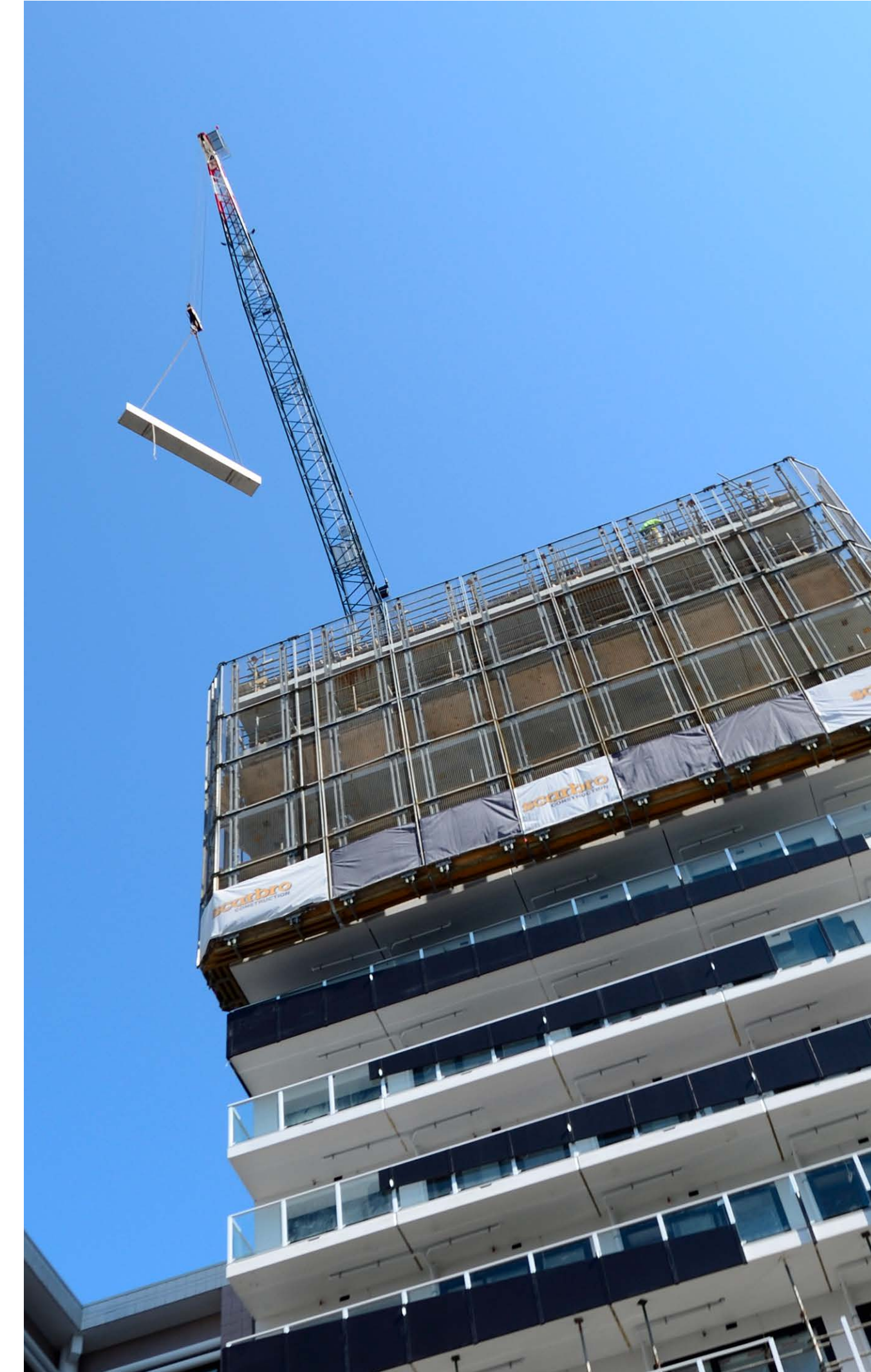
If a defect or fault arises during the DNP due to defective workmanship or materials, the Contractor is responsible for remedying the issue. If the Contractor fails to do so within a reasonable time, the Owner may engage third parties to carry out the necessary work and recover the cost from the Contractor.

To incentivise the Contractor to address defects, Owners often retain a portion of the contract price until the end of the DNP. This retention ensures the Contractor’s obligation to fix defects and secures the payment of the retained amount upon completion. Refer to the “**Retentions**” section.

[Retentions](#)

### Statutory warranties

Under the Building Act 2004, residential building work is covered by a ten-year statutory warranty. This warranty ensures that the work is carried out with reasonable care and skill, complies with the approved plans and building consent, and that the materials used are suitable for their intended purpose. Parties cannot contract out of this warranty.



# Topic 4: Pricing

## Contract price

### Cost structure

The following are some of the most commonly used pricing structures for construction projects, with some projects employing a combination of these methods:

### Payment structure

In New Zealand, project payments are generally structured in one of two ways:

- **Progress payments** – payments are made based on the percentage of work completed.
- **Milestone payments** – payments are made upon the completion of key project stages.

### Lump-sum contracts

A fixed price is agreed upon for a defined scope of work. However, the price may be adjusted if the Owner changes the design or scope, or if unforeseen circumstances arise.

### Measure and value

A schedule of agreed prices (such as a rate per unit of work) is established at the start. The quantity of work is then measured and paid for accordingly.

### Cost reimbursement

The Contractor is reimbursed for the actual costs incurred, plus a pre-agreed margin. This method is less commonly used due to the challenges of cost predictability and control.

### Target cost

Before signing the contract, both parties agree on a target cost for the project. A structured formula is typically used to estimate the cost. Upon completion, any savings or cost overruns are shared between the Owner and Contractor according to the agreed-upon percentages.

### Alliances and collaborative contracting

These approaches are often used in major projects, where the parties work together to achieve common goals.

# Topic 4: Pricing

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## Indexation

Indexation of prices in construction projects varies depending on the type of contract.

Under the NZS 3910 (“construct-only”) and NZS 3916 (“design-and-build”) contracts, there is an optional cost fluctuation mechanism to account for inflation. The default formula for indexation is based on a 40% adjustment for labour costs and 60% for materials costs, reflecting the typical cost distribution in a construction project.

Statistics New Zealand publishes price indexes relevant to the construction industry, including the Labour Cost Index and the Producers Price Index – Construction Input Index. The indexation formulas in the NZS 3910/3916 cost fluctuation provisions are derived from these indexes, rather than from the actual costs incurred by the Contractor.

The labour and materials percentages can be adjusted to better reflect the specific cost breakdown of a particular project.

### Risk for Price Fluctuations

NZS contracts include an ‘opt-out’ cost fluctuation provision, and it is fairly common for parties to choose this option. However, cost fluctuation provisions are more frequently accepted during periods of high cost volatility, or when materials with significant price fluctuations cannot be fixed or hedged.

If the contract does not include a cost fluctuation provision, the Contractor cannot recover increased costs, including labour and materials, unless a relevant variation occurs. In some cases, contracts may allow for fluctuations only for specific materials, such as diesel fuel or asphalt.

## Payments

### Advance payments

In New Zealand, advance payments are commonly used for long lead items and have become more prevalent recently to secure costs and mitigate the risk of shipping delays.

When materials are paid for prior to their arrival on site, separate agreements for offsite materials are typically established to allocate the associated risks and responsibilities. NZS contract forms include a standard offsite material agreement as a schedule to the main terms, although this is often modified.

Owners frequently safeguard their interests in high-value advance payments through advance payment bonds.

### Progress payments

Typically, the Contractor submits a payment claim at regular intervals. The Owner then reviews the claim and issues a payment schedule detailing the amounts deemed to be due.

The payment claim / payment schedule process is governed by the CCA, and parties need to take care to ensure they comply with the strict requirements of the legislation to avoid running into issues.

### Late payments

Construction contracts in New Zealand typically include provisions for interest on late payments.

The CCA establishes default payment structures designed to maintain regular cash flow within the industry. If a qualifying payment claim or invoice (see the “**Invoicing**” section) is not properly disputed in a payment schedule and remains late or unpaid, the CCA allows the Contractor to:

- suspend work after providing notice; or
- issue a statutory demand for payment.

[Invoicing](#)



## Topic 4: Pricing



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### Invoicing

#### Requirements for tax invoices

In New Zealand, an invoice typically includes:

- the words “tax invoice” or “taxable supply information”;
- the name and GST number of the provider;
- the date of issue; and
- a description of the goods or services.

#### Recommended requirements for construction invoices

To comply with the CCA and benefit from its provisions, a payment claim or invoice must:

- be in writing;
- identify the construction contract to which the payment relates;
- specify the construction work and the relevant period covered by the payment;
- state the amount due and the payment due date;
- explain how the payee calculated the claimed amount; and
- indicate that the claim is made under the CCA.

Additionally, a payment claim must be accompanied by an outline (in the prescribed form) detailing the process for responding to the claim, as well as the consequences of failing to respond or pay the specified amount.

Invoices issued after a payment claim are primarily a formality, reflecting the outcome of the payment claim and payment schedule process. See the “**Payments**” section.

[Payments](#)

Tax laws, which came into effect on 1 April 2023, amended the rules regarding invoicing and record-keeping. The requirement for tax invoices has been replaced with a more flexible obligation to provide and retain certain records, referred to as “taxable supply information.”

Inland Revenue has clarified that businesses are not required to change their use of the term “tax invoice,” and that invoicing practices compliant with the previous rules will also meet the new requirements. References to a “tax invoice” can now be interpreted as “taxable supply information” (s19Q(1) Goods and Services Tax Act 1985).



# Topic 5: Time



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## Planning Programmes

### Role and responsibility of construction programmes

In New Zealand, a programme is typically prepared by the Contractor at the start of a project and plays a crucial role in setting the project up for success. While the Owner may review the programme and provide feedback, the ultimate responsibility for effective programming lies with the Contractor.

### Standard programme requirements

Standard contractual requirements for a programme typically include:

- the proposed sequence of work, along with the start and end dates for each activity, showing how the Contractor plans to meet the project's completion deadlines;
- the critical path and the dependencies between activities; and
- the dates by which the Contractor requires access to specific areas of the site, as well as any materials, services, or work to be provided by the Owner.

## Delays

In the event of a delay, standard contracts in New Zealand typically outline the following process:

- the Contractor must notify the Owner / Engineer / Contract Administrator, usually within a specified timeframe, and provide details of the cause and impact of the delay;
- the Owner will assess the extent of the delay and determine the appropriate extension of time, with the Owner / Engineer / Contract Administrator generally required to act reasonably in making this assessment; and
- if the parties disagree on the length of the extension of time, the dispute resolution procedure will be followed.

In New Zealand, there is an expectation that Contractors will take reasonable steps to avoid potential delays and mitigate any that occur. In standard contracts, failure to give timely notice can affect the Contractor's eligibility for extensions of time and variations, particularly if it prevents the Owner from taking steps to avoid or reduce the delay.

Delays can lead to additional costs for the Contractor and losses for the Owner. The responsibilities and remedies for costs and losses resulting from delays (usually assigned to the party responsible for the delay) and the approach to concurrent delays are outlined in the "**Remedies in the event of delays**" section.

[Remedies in the event of delays](#)



# Contracts typically provide that...



## Contractor Delays

Contractor liable for damages between the due date for completion and the actual completion (usually in the form of daily or weekly liquidated damages)

Contractor may be required to expedite the work at its cost to recover lost time



## Owner Delays

Owner will allow the Contractor additional time to complete the work

Owner will pay the extra costs incurred due to the prolongation of the work, either based on a reasonable assessment of those costs or a fixed working daily rate (i.e. time related costs)

## Concurrent delays

No universally accepted definition of concurrent delay in New Zealand

Generally refers to a situation where both the Owner and the Contractor cause overlapping delays to the critical path of the project

New Zealand courts have not yet addressed concurrent delay directly

It is likely courts would follow the approach established in the High Court of England and Wales case *Henry Boot Construction (UK) Ltd v Malmaison Hotel (Manchester) Ltd (1999) 70 Con LR 32* where the Contractor is entitled to an extension of time for the full duration of the concurrent delay, but not for prolongation costs during the period of concurrency. Parties may agree to a different approach in the contract.

# Topic 5: Time



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## Extension of time

Contractors typically issue written notices for extensions of time to the Owner / Engineer (or Independent Certifier in NZS 3910:2023).

In these notices, Contractors are generally required to outline the contractual basis for their extension of time claim.

### Grounds for an extension of time

Common grounds for an extension of time claim include:

- the impact of variations;
- adverse weather conditions;
- events that could not have been reasonably foreseen by an experienced Contractor;
- defaults by the Owner under the contract; and
- force majeure events, such as floods, volcanic activity, or seismic events.

### Measuring an extension of time

Extensions of time are typically determined by assessing how much the event or circumstance, qualifying as a ground for an extension, has caused (or will cause) a delay to the Contractor's activities or the critical path (depending on the specific contract requirements).

There are various prospective and retrospective methods for measuring delay, with no statutory mandate for a specific approach. Standard form New Zealand contracts do not prescribe a particular delay analysis methodology, leaving the choice of method to the discretion of delay experts. Often, experts and the parties reference the Delay and Disruption Protocol published by the Society of Construction Law, although it provides only non-binding guidance.

Key evidence for assessing delay usually includes the project programme(s) and contemporaneous documentation such as instructions, site notes, photographs, communications between the parties, meeting minutes, and timesheets. Contemporaneous records may be highly valuable for delay experts, allowing them to ascertain what occurred and when.

## Force majeure

In New Zealand, force majeure applies only if it is explicitly included in the contract.

Force majeure clauses are not typically included as standard in most New Zealand construction contracts. However, many standard form contracts provide some relief for events that would generally be considered force majeure events. In some cases, force majeure clauses may be added to standard contracts as special conditions.

These clauses often allow for the suspension or excuse of non-performance of contractual obligations for the duration of the force majeure event (such as earthquakes, civil war, pandemics etc). They may also permit the termination of the contract if the force majeure event persists beyond a pre-determined duration.

## Unforeseen circumstances

Relief for unforeseen circumstances is generally only available if it is explicitly included in the contract. However, New Zealand acknowledges the common-law concept of frustration, which may apply in certain situations involving unforeseen circumstances. Frustration can serve as grounds for termination under NZS contracts.

In standard form contracts in New Zealand, a Contractor is typically entitled to additional time for unforeseen circumstances, but not necessarily to additional costs.

## Disruption

Disruption refers to an interruption or hindrance to a Contractor's planned methodology, resulting in a loss of productivity and efficiency. While disruption is recognised as a concept in New Zealand, claims for disruption and associated remedies are only available if the contract specifically allows for them and if the requirements of that contract are met.

There is no single, universally accepted method for proving disruption. However, one commonly used approach is the "measured mile" method. In this approach, the Contractor demonstrates the level of productivity achieved in areas of the project that were not affected by disruption, then links a specific disruptive event to the reduced productivity in the affected areas of work.

Other approaches, such as productivity-based assessment methods, are also recognised. These may involve using comparative data from other projects or industry standards to establish what productivity levels would have been achievable "but for" the disruption. Alternatively, cost-based methods, where Contractors compare estimated costs with actual costs, are possible but more difficult to directly link to disruptive events. This is because cost discrepancies may be attributed to other factors, such as insufficient tender pricing, rather than disruption itself.

# Topic 6: Liability and Risk

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## Exclusion of liability

Warranties under the Building Act 2004 cannot be waived for residential construction. On policy grounds, a person cannot exclude liability for their own fraudulent actions.

### Wilful misconduct and gross negligence

In contracts that include limitations on liability, such clauses typically aim to ensure that these limitations do not apply if the Contractor is found to have engaged in wilful misconduct or gross negligence. However the concepts of wilful misconduct and gross negligence are not fully developed in New Zealand case law.

## Limitation of liability

### Consumer Contracts

In consumer contracts in New Zealand, the Consumer Guarantees Act 1993 limits the ability to impose liability restrictions. For example, a Contractor cannot limit its liability for completing construction with reasonable skill and care, ensuring it is fit for purpose, and delivering it on time or within a reasonable timeframe.

### Commercial contracts

In *CBL Insurance Ltd (Liq) v Harris* [2021] NZHC 1393, the High Court confirmed that clear limitations of liability are enforceable in commercial contracts in New Zealand. Limitations of liability are now often included in New Zealand's newer standard form contracts as an option, and it is not uncommon for parties to include such clauses in their agreements.

## Indemnities

Parties are generally free to negotiate indemnities, subject to certain policy restrictions—such as excluding indemnification for court-imposed fines and penalties. Standard form contracts in New Zealand typically include indemnities as follows:

- from the Contractor to the Owner for losses:
  - (i) arising from the Contractor's actions or omissions while executing the contract work, or any negligence or breach by the Contractor;
  - (ii) for addressing defects in the construction;
  - (iii) for injuries to persons or damage to property.
- from the Owner to the Contractor for losses:
  - (i) arising from the Owner's lack of rights to perform construction on the site;
  - (ii) arising from acts or omissions by the Owner (although NZS contracts have removed this indemnity);
  - (iii) for injuries to persons or damage to property.

It is also common for parties to agree on additional indemnities (where allowed by law), including for:

- infringement of third-party intellectual property rights;
- violations of laws, such as the Building Act 2004 or the Resource Management Act 1991; and
- breach of confidentiality (if applicable).



# Topic 6: Liability and Risk

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## Guarantees

There are no mandatory guarantees in New Zealand. However, various types of performance guarantees, such as bonds and parent company guarantees, are commonly used in the New Zealand market.

### Bonds

Standard form contracts in New Zealand typically provide for performance bonds. These are generally issued by the Contractor to the Owner as security for the Contractor's performance of their obligations. However, NZS 3910 and NZS 3916 also offer the option for a bond to be provided by the Owner to the Contractor, though this is rarely utilised.

### Parent Company Guarantees

If the Contractor is a subsidiary with limited assets, the Owner may require, and financiers may expect, performance to be guaranteed by a parent company.

### Subcontractor Continuity Guarantees

A Subcontractor Continuity Guarantee is a promise, in the form of a deed given by a Subcontractor to the Owner, that the Subcontractor will keep working on the project even if the main Contractor is replaced or becomes insolvent. The purpose is to keep the project moving, protect the Owner from delays and project collapse and allows the Owner to retain specialist subcontractors with critical knowledge. It also allows greater price certainty as it reduces the need to re-tender incomplete work.

## Insurance

In NZS contract forms, the parties typically take out four types of insurance:

- **Contract works insurance** – for loss or damage to the construction works;
- **plant insurance** – for loss of equipment on site essential to the contract's performance;
- **public liability insurance** – for legal liability to third parties; and
- **professional indemnity insurance** – for the design of the construction work.

Additionally, other types of insurance, such as marine cargo insurance or motor vehicle insurance, may be taken out if the specific project involves associated risks.

## Insolvency

In most contracts in New Zealand, the insolvency of a party allows the other party to terminate the contract. Additionally, if the Contractor becomes insolvent, the Owner has the right to regain possession of the site.

## Risk sharing

Risk-sharing arrangements are relatively uncommon in New Zealand, typically appearing in alliance agreements or target cost arrangements (see the "**Contract price**" section).

The standard approach to risk allocation in New Zealand is to assign the risk to the party best able to control it. Alternatively, a party may take on additional risk in exchange for a price premium (if accepted by the Contractor) or a reduction (if accepted by the Owner).

[Contract Price](#)

## Price shared risk

In New Zealand, most contracts tend to allocate risks rather than share them. However, when risks are shared, they are typically managed through a target price mechanism. Under this approach, the parties share any cost overruns or savings (if the actual price is above or below the target) based on predetermined percentages or values. Risk-sharing arrangements can incentivise the Contractor to carefully manage the associated risks. While there are various ways to structure such mechanisms, it remains common for certain risks to be allocated exclusively to one party.

Cost fluctuation clauses can enable the parties to share the risk of inflation (see the "**Indexation**" section).

[Indexation](#)

## Intellectual property

Typically, both the Owner and the Contractor retain their own intellectual property (IP) rights but grant licences to each other as necessary for the project. Rights to any new IP created during the project are negotiated and can vary widely. A common approach is shared ownership of new IP, with cross-licences between the parties. Additionally, it is common for the parties to agree to indemnities in case of infringement of third-party IP rights.

# Topic 7: Remedies and damages



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## Retention and suspension rights

### Retentions

Retentions are permitted and commonly used in New Zealand construction contracts. The CCA sets out requirements in respect of retention monies as follows:

- while retention money is automatically deemed to be held on trust, the party holding retention monies must hold that money in a separate bank account where only retentions are held, and must advise the bank that the account is for the purpose of holding retention money; and
- the party holding retention money must keep accounting records relating to the retention money, and make those records available to the party for whom retentions are being held on a quarterly basis (albeit the records must be available for inspection at any time without charge).

Failure to hold retention money in accordance with the requirements of the CCA is an offence, and a party who holds retention money is liable for a fine of up to \$200,000 per offence. Directors may also face personal liability of up to \$50,000 per offence.

### Suspension rights

Contractors have statutory rights to suspend work due to non-payment; however, under NZS forms of contract, they generally cannot suspend work just because there is a dispute.

## Restricting remedies

Statutory limitations under the Limitation Act 2010 dictate the time frame within which a party can bring a claim following a contract or event.

Parties often include contractual limitations on the duration of liabilities. For instance, liability under consultancy contracts is typically limited to six years from the date the services were completed.

Disputes involving building work may have longer limitation periods than is typical for other civil claims.

The Building Act 2004 provides a 10-year-long stop limitation period, which prevents claims in respect of building work more than 10 years after the act or omission that caused the issue, regardless of when the defect was discovered. This provides certainty for Contractors and Consultants by limiting long term liability.

## Sole remedy clauses

Sole remedy clauses are not included in standard NZS construction contracts but are enforceable in commercial contracts. However, a contract specifies the payment of liquidated damages in the event of delay, liquidated damages are typically regarded as the sole remedy for delay.

## Excluded damages

In New Zealand, it is not uncommon for commercial parties to exclude liability for:

- indirect, consequential, special, incidental, exemplary, or punitive losses or damages; and
- loss of profit, revenue, goodwill, or production.



# Topic 7: Remedies and damages

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## Termination

The ability to terminate a construction contract and the associated remedies depend on the specific contract terms. In New Zealand, construction contracts typically allow termination for frustration or default, with the grounds for default often reflecting the obligations of each party.

### Contractor default

For Contractors, grounds for termination typically include:

- an insolvency event;
- subletting the entire or majority of the works to another party without consent;
- material breach of contract; or
- persistent, flagrant, or wilful failure to perform obligations under the contract.

Termination for Contractor default usually allows the Owner to remove the Contractor from the site and have the works completed by third parties, with any additional costs recoverable from the Contractor.

Some construction contracts also include a provision allowing the Owner to terminate the contract at its convenience. In such cases, the Contractor may be entitled to payment for completed works, unrecovered costs, and compensation for lost profits.

## Owner default

For Owners, grounds for termination typically include:

- an insolvency event;
- abandoning the contract;
- material breach of contract; or
- persistent, flagrant, or wilful failure to perform obligations under the contract.

Termination for Owner default generally entitles the Contractor to payment for completed works, unrecovered costs, and compensation for lost profits.

### Termination pre-requisites and wrongful termination

Most construction contracts in New Zealand require the terminating party to notify the defaulting party of the default, and provide an opportunity to remedy it within a specified period. If the default is not remedied within the prescribed time, the terminating party may proceed with termination.

New Zealand law also recognises wrongful termination, where a party attempts to terminate the contract without a valid reason or fails to follow the contractually required process, potentially leading to damages.



# Topic 8: Dispute resolution

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## Regular dispute resolution

### Courts

In New Zealand, construction disputes may be heard by four levels of courts, in descending order:

- the Supreme Court;
- the Court of Appeal;
- the High Court; and
- the District Court.

### Adjudication

In New Zealand, parties cannot contract out of the adjudication process set out in the CCA. Adjudication is a fast, interim dispute resolution method conducted solely through written submissions, with no hearings.

The adjudicator's decision is binding, and any awarded amounts must be paid within two working days. However, despite the obligation to pay, parties may still pursue litigation or arbitration for a final resolution of the dispute. Adjudications are decided by a single adjudicator from a recognised institution.

### Recognised institutions

In New Zealand, several institutions are recognised as competent to appoint adjudicators or arbitrators for construction disputes. These "authorised nominating authorities or (ANAs) are:

- the Building Disputes Tribunal;
- the New Zealand Dispute Resolution Centre;
- the Arbitrators and Mediators Institute of New Zealand;
- the Royal Institute of Chartered Surveyors; and
- the Adjudicators Association of New Zealand

## Alternative dispute resolution

The following private and alternative dispute resolution options are recognised in New Zealand:

### Arbitration

A binding form of dispute resolution commonly used in New Zealand contracts, including those under NZS forms of contract. It is governed by the Arbitration Act 1996.

### Mediation

A non-binding form of dispute resolution widely used in New Zealand contracts, also included in NZS forms of contract.

### Expert recommendation/ determination

Referrals to experts for either binding decisions or non-binding recommendations are commonly used in New Zealand.

### Dispute review boards

A standing panel of (usually) independent experts appointed at the start of a project to help prevent and resolve disputes as they arise. Typically used for major projects due to their cost, with the scope of their authority varying depending on the contract.

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