

# Amended Construction Contract NZS 3910:2023

After multiple rounds of consultation, feedback and drafting, Standards New Zealand released a revised NZS 3910, being the biggest revision since 1987 to the Conditions of contract for building and civil engineering construction.



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## Background

There is no such thing as one size fits all. But there has been a proliferation of special conditions to meet the limitations of NZS 3910:2013 and make a contract bespoke. The standard form contract has been revised as part of a project commissioned by the New Zealand Infrastructure Commission – Te Waihanga and the Construction Sector Accord. A Review Committee was appointed from government agencies and construction and infrastructure organisations and led and managed by Standards New Zealand.

The initiation phase ended in February 2022, the development phase in April 2023 and the public consultation phase in July 2023. The Review Committee tasked with the revision voted on the further amendments by ballot during September 2023. As expected, the NZS 3910:2023 has been released, just prior to Christmas 2023.

## NZS 3910:2023

→ The new edition incorporates three key changes.

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### Key Changes in revised version

Three changes which are prominent are as follows:

#### Role of the engineer

The 2023 edition separates the dual role of the engineer into two new roles – the contract administrator and the independent certifier. The contract administrator acts for and on behalf of the principal and gives instructions to the contractor, such as on variations. The independent certifier acts impartially and makes all decisions on the contract to which he or she is contractually entrusted, such as on practical completion. This removes the potential conflict of interest. But the role can be performed by the same person, particularly for larger, complex construction projects.

#### Final account

A new section has been added for Interim Final Accounts and

Final Accounts, to enable agreement such as post-variations after practical completion. If agreement cannot be reached, the independent certifier will be called upon to approve them. This process is set out at section 12.

#### Limitation of liability/ fault based indemnity

A cap on the contractor's liability has been introduced (clause 7.2), which limits the contractor's aggregate liability to the principal to an amount specified in the contract's special conditions. A number of exclusions to the limitation still exist.

The previous "no fault" indemnity has been removed (clause 7.1), which narrows the contractor's exposure.

Further changes have been made, including simplification of language and an update to encapsulate modern legislative obligations. Many of the changes have previously been inserted as

special conditions in the NZS 3910: 2013 iteration of the contract.

#### Conclusion

The comprehensive update has brought NZS 3910 in line with the current legislative environment and market conditions. Now construction contracts should be less highly modified thanks to NZS 3910: 2023.

#### About the author:

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