S82 – NOTICE OF ACCEPTANCE OF DEFECTIVE WORK/MATERIAL

(Subclause 29.4)

DATE: [INSERT DATE]

TO CONTRACTOR: [INSERT CONTRACTOR NAME]

PROJECT NAME: [INSERT PROJECT NAME]

CONTRACT No.: [INSERT CONTRACT NUMBER]

The Contractor is notified, pursuant to clause 29.4 of the Contract conditions, that the Purchaser elects to accept the following work or material namely [INSERT DETAILS OF DEFECTIVE WORK OR MATERIAL] which does not comply with the Contract.

[OPTION A - SUPERINTENDENT TO DELETE THIS PARAGRAPH IF NOT APPLICABLE] The Superintendent will price the relevant work or materials in accordance with the applicable reduced level of service in [INSERT PROVISION DETAILING RELEVANT REDUCED LEVEL OF SERVICE].

[OPTION B - SUPERINTENDENT TO DELETE THIS PARAGRAPH IF NOT APPLICABLE] The Superintendent will price the relevant work or materials pursuant to subclause 36.4 as a deemed variation.

|  |  |
| --- | --- |
| Signed by the Superintendent: |  |
|  |  |
| Signature |  |
|  |  |
| Name |  |
|  |  |
| Date |  |

|  |  |
| --- | --- |
| [REMOVE BEFORE SENDING] Notes: | |
| a) | Option A: Subclause 29.4 of AS4000-1997 has been amended by Annexure Part B to allow the Superintendent to accept a defect or omission and to price that defect in accordance with reduced levels of service provided elsewhere in the Contract. Option A can only be used where reduced levels of service are specified in the Contract. |
| b) | Option B: Subclause 29.4 of AS 4000–1997 is in effect equivalent to Clauses 30.5 of AS 2124–1992 and 30.4 of AS 2124–1986 and gives the Purchaser the option of electing to accept defective work or material instead of having it either rectified under subclause 29.3 or having a variation directed by the Superintendent under clause 36. |
| c) | AS 4000–1997 does not contain specific provision (as does AS 2124–1992 in clause 30.4) for a variation to be directed in respect of defective work or materials in lieu of a direction to rectify that work under subclause 29.3 (which is the equivalent clause to clause 30.3 in AS 2124–1992). However, it is submitted the general variation power given to the Superintendent under subclause 36.1 of AS 4000–1997 can be invoked by the Superintendent to direct such a variation in respect to defective work or materials. |
| d) | A direction by the Superintendent that the Purchaser elects to accept defective work or materials whereupon there is a deemed variation, means that the defective work or material so accepted by the Purchaser is to be priced under subclause 36.4 as though it were a variation directed under subclause 36.1. This gives flexibility to the Superintendent to issue a direction under subclause 36.2, as well as permitting the Superintendent to price it under subclause 36.4. |
| e) | For further guidance see the notes to subclause 29.4 in section 12.14 of Chapter 12 of the HB 140 Manual. |
| f) | As to service of Form S82 refer to clause 7. |