

# NZS 3916:2025 – What’s changed in the new design and build standard?

October 2025

Nearly two years after the release of NZS 3910:2023, the publication of the NZS 3916:2025 (Design and Construct) standard form construction contract is a welcome and timely development. This is especially so given the lack of certainty there has been in the market following the publication of NZS 3910:2023 as to which form of contract to use when engaging Contractors on a design and build basis. NZS 3916:2025 is generally consistent with the consultation draft published earlier this year and incorporates all relevant changes introduced in NZS 3910:2023. Our previous summary of the Top 10 changes in NZS 3910:2023 is recapped briefly below and otherwise available [here](#). In addition to these changes, we summarise the key changes specific to NZS 3916:2025 for users to be aware of.



## NZS 3910:2023 recap

- The previous role of the “Engineer to Contract” has been split into two separate roles: (i) the Contract Administrator; and (ii) the Independent Certifier. This new structure enables a clearer separation between decision making functions and contract administration responsibilities.
- A cap on the Contractor’s liability (subject to exclusions) has been included as an “opt in” clause, so that its inclusion can be considered on a client / project-by-project basis.
- Contractor indemnities are now fault-based, and Principal indemnities no longer include an indemnity for losses arising out of the Principal’s (or others who it is responsible for) acts or omissions.
- New concepts of an “Interim Final Account” and a “Final Account” have been included to facilitate certainty to both parties at the end of the project.

## Design-related changes



### Principal’s Requirements

- All relevant documents comprising the Principal’s Requirements to be included in the contract and identified as the Principal’s Requirements.
- A new Annexure 1 to the Contract Agreement has been included to list relevant Drawings, Specifications and other documents (but may not be exhaustive list). The contract does not address order of precedence within this Annexure 1, but suggests an order of priority could be added to Annexure 1.
- Principal’s Requirements now expressly include purpose, form, function, performance, standards as well as other Requirements for the design and construction of the contract.



### Novation of design agreements

- Design agreements to be novated from the Principal to the Contractor are to be listed in the Specific Conditions.
- The Principal is to provide deeds of novation to the Contractor for execution within 10 working days of the date of acceptance of tender (previously, there was no timeframe, but the payment precondition remains).
- The Principal is to provide fully executed deeds of novation to the Contractor within 20 working days of receipt of those executed by the Contractor (previously no such requirement).
- The form of deed of novation is unchanged in form but has been moved from Schedule 17 to Schedule 6.



### Design Documentation

- The Contractor is to submit Design Documentation for review by the Contract Administrator at the design stages specified in the Specific Conditions (rather than as per the Contractor’s programme).
- If the Contract Administrator rejects any Design Documentation, it is now required to provide its reasons for rejection; while previously a matter of good practice this was not expressly required.
- If the Contractor suffers delay in completion or incurs additional Cost because of the Contract Administrator unreasonably rejecting the Design Documentation, such delay or additional Cost is treated as a Variation – this entitlement has been added following public consultation.



### Producer statements

- Producer statements may include any or all of PS1, PS2, PS3, or PS4 (or as otherwise required under the contract) and are to be in the form required by the relevant authority.
- Schedule 6a (Form of Producer Statement – Design) has been removed and Schedule 6b (Form of Producer Statement – Construction) from the DZ 3916 Consultation Draft has not been included.



### Design management plan

- A new option for the Contractor to provide a design management plan has been included in the management plan provisions.

## Other changes of note



### Notice of Variations

- Where the Contractor and Contract Administrator cannot agree whether an instruction or matter involves a Variation, the matter is to be escalated to the Independent Certifier for a decision.
- This departs from the position under NZS 3910:2023 where the Contract Administrator makes a decision in such circumstances (which the Contractor may dispute).



### Order of precedence

- Schedule 1 – Parts A and B (‘Specific Conditions’) has been elevated above Schedule 2 (‘Special Conditions’) in the order of precedence of contract documents in the contract agreement.
- This is a departure from the order of precedence under both NZS 3916:2013 and NZS 3910:2023 and will require consideration going forward.
- The guidance notes are silent on why this change has been made.