Index

ADJUDICATION—Cont'd

Enforcement, § 18:20

ABANDONMENT OF CONTRACT

By contractor

Fees, § 18:11 see Performance Frivolous and vexatious claims, § 18:6 By owner Insolvency considerations, § 18:21 see Owner Interim relief, objections regarding, ACCELERATION DAMAGES § 18:3 Generally, § 9:23 Judicial review, § 11:41 ACCEPTANCE Objections regarding, § 18:3 Parallel proceedings, § 18:5 Bonding company, § 15:32 Pre-selection, prohibition against, § 18:9 Of defective work or materials, § 4:23, § 7:22, § 9:36 to § 9:43, § 15:32 Procedure, § 18:12 to § 18:14 Of performance, § 5:7 Proceeding, § 11:36 Third parties, involvement of, § 18:4 ACCEPTANCE OF OFFER Transition provisions, § 16:12 Acceptance by conduct, § 1:41 AGENT AND AGENCY Communication of, § 1:42 Conditional, § 1:40 Generally, § 1:18 to § 1:26 Authority, § 1:21 Effect of acceptance, § 1:40 actual, § 1:21 Effect of counter-offer, § 1:40 breach of warranty of, § 1:26 Electronic communications, § 1:44 implied, § 1:21 Existence of, § 1:40 Form of acceptance, § 1:40 ostensible or apparent, § 1:21 Method of, § 1:40 to § 1:42 scope of authority, § 1:21 Closely held or controlled companies, Mitigation, in the context of, § 9:20 § 1:24 Necessity for receipt of, § 1:42, § 3:2 Consultant as agent for owner, § 13:4 Tenders, § 1:43, § 3:2 Contractor, distinguished from, § 1:19 Unilateral contracts, § 1:43 Creation, by consent, § 1:19 **ADJUDICATION** Employment, distinguished from, § 1:19 Generally, § 11:34 to § 11:41, § 18:1 Insurance adjusters, § 1:21 Abuse of process, § 18:6 Liability for agent's contract, § 1:20 Adjudicator, challenging selection of, Nature of agency, § 1:18 to § 1:26 § 18:10 Pre-incorporation contracts, § 1:25 Adjudicator's notifications/directions, Principal, disclosed and undisclosed, § 18:15 to § 18:19 § 1:23 Appointment of, § 11:36, § 18:8 Principal's liability for, § 1:20 Commencement of, § 11:35, § 18:7 Ratification, § 1:22 Determination by the adjudicator, § 11:37 Subcontractor, distinguished from, § 1:19, Effect of, § 11:38 to § 11:40 § 12:8 enforcement, § 11:40 **AGREEMENT** entitlement to suspend work, § 11:39 obligation to pay, § 11:39 Collateral subsequent proceedings, § 11:38 see Collateral agreement or warranty Eligibility for, § 18:2 Termination of contract by, § 8:2 to § 8:7 © 2024 Thomson Reuters, Rel. 6, 12/2024 Index-1

Distinguished from subcontract, § 12:2

ARBITRATION—Cont'd AGREEMENT—Cont'd To agree, § 1:32 Competence-competence, § 11:13 Confidentiality, § 11:8 ALLOWANCES AND Domestic arbitration statutes, § 11:2 CONTINGENCIES, IN LUMP SUM Duty to decide submitted issue, § 11:21 CONTRACT Federal commercial arbitration statute, Generally, § 6:3 § 11:2 **AMBIGUITY** Independent and impartial, duty to be, § 11:12, § 11:23 Generally, § 2:8, § 2:16 Interim court and arbitration proceedings, AMENDMENTS TO CONTRACT § 11:15 See Variations whether effective against third parties, § 11:15 ANTICIPATORY BREACH OF International commercial arbitration **CONTRACT** requirement for agreement, § 11:7 See Breach of contract statutes, § 11:2 ARBITRATION Limitation period and issues, § 11:10, Agreement for § 11:27 disputes included, § 11:13 Nature of, § 11:1 interpretation, § 11:5, § 11:13 Procedural fairness, duty of, § 11:22 mandatory submission, necessity for, Reasons, duty to give, § 11:20 § 11:5 Remit back to the arbitral tribunal, court's minimum content, § 11:6 power, § 11:24 oral domestic arbitration agreements, Requirement of prior mediation or § 11:3 negotiation, § 11:10 separate from or part of commercial Revocation of arbitration agreement, agreement, § 11:4 § 11:9 written international commercial Stay of arbitral or court proceedings, arbitration agreements § 11:14 requirement for, § 11:3 construction lien claim, § 11:14 Arbitral tribunal impact on limitation issues, § 11:14 appointment of, § 11:11 third parties, § 11:14 challenge to, § 11:12 Termination of arbitral proceedings, composition of, § 11:11 § 11:16 jurisdiction, § 11:13 Two regimes, domestic and international, to determine own jurisdiction, § 11:2 § 11:13 UNCITRAL, § 11:2 Award Uniform Arbitration Act, § 11:2 appeal of domestic award, § 11:18 Uniform International Commercial time for. § 11:25 Arbitration Act, § 11:2 declaration of invalidity, § 11:26 Uniform Law Conference of Canada, enforcement of, § 11:28 § 11:2 Mareva injunction, § 11:28 Valuation, distinguished from, § 11:6 final, § 11:16 **ARCHITECT** review and setting aside, § 11:19 to See Consultant § 11:24 Whether lien for architectural services. grounds, § 11:19 to § 11:24 § 16:18, § 16:41 limitation issues, § 11:27 ASSIGNMENT time for, § 11:25 Challenge to member of tribunal, § 11:12 Consent to assignment, § 4:21

Commencement of arbitration, § 11:10

ASSIGNMENT—Cont'd

Express or implied terms re, § 12:2 General conditions re, § 4:21 Prohibition of assignment, § 4:21 Third parties, § 12:2

BANKRUPT AND BANKRUPTCY

Capacity of trustee to contract, § 1:12 Incapacity of bankrupt to contract, § 1:12

BETTERMENT

Generally, § 9:22

BID

See Tendering

BID BOND

See Bonds

BID DEPOSITORY

Generally, § 3:16

BONDS

Generally, § 15:1 to § 15:44 Alternatives to, § 15:1 Bid bond, § 15:1.70, § 15:22 to § 15:24 amount recoverable, § 15:24 condition in the bond, § 15:23 Completion by surety, § 15:4 Condition of the bond, § 15:8 triggering event, § 15:9 Defence open to surety, § 15:4 Delivery, § 15:3 Discharge of the surety, § 15:8 Guarantee nature of a bond, § 15:2 to § 15:9 Incorporation of building contract into bond, § 15:16 Indemnity of surety, § 15:13 distinction from guarantee, § 15:18 Insurance, distinguished from bond, § 15:19 Interpretation of the bond, § 15:18 Labour and material bond see payment bond Limitation period, § 15:3, § 15:20 Mitigation, obligee's duty to, § 15:17 Nature of, § 15:1, § 15:2 to § 15:9 Notice of claim under, § 15:20 Obligation guarantees, § 15:7 Obligee, § 15:6

Payment bond, § 15:1.70 to § 15:9, § 15:36 to § 15:44 change or prejudice to rights, § 15:42 condition in the bond, § 15:37 pay when paid clauses, § 15:41 principal's liability, § 15:40 scope of claimants and amount of bond, § 15:38 scope of services and materials included in the bond, § 15:39 Performance bond, § 15:1.70, § 15:25 to § 15:35 completion of the work, § 15:32 condition in the bond, § 15:26 default by principal, § 15:27 loss, proof of obligee's, § 15:33 notice of default, § 15:28 obligee's default, § 15:29 sub-subcontractors and suppliers, § 15:33, § 15:34 surety's obligations, scope of, § 15:31 variation or prejudice to surety's rights, § 15:30 Principal, § 15:5 Proof of claim, § 15:17 Release of surety, § 15:2 to § 15:17 Relief from forfeiture, § 15:20 Right to require bond, § 15:1, § 15:21 Seal, § 15:3 Signature, § 15:3 Specialty, § 15:3 Subrogation, nature of, § 15:14 Surety, § 15:4 accommodation and compensated sureties, § 15:4 right not to have rights amended or prejudiced, § 15:15 right to information, § 15:11 right to investigate claim, § 15:12 right to notice of claim, § 15:12 right to recover from principal and to indemnity, § 15:13 right to subrogation, § 15:14 Tenders, § 15:21 Writing, § 15:3

BONDS—Cont'd

BREACH OF CONTRACT

Generally, § 7:1 to § 7:25 Anticipatory breach, § 8:16, § 9:14 to § 9:21

obligation to mitigate, § 15:17

obligation to prove loss, § 15:17

BREACH OF CONTRACT—Cont'd BUILDING CONTRACT By contractor, § 7:16 to § 7:25 Meaning of, § 1:1 et seq. By owner, § 7:6 to § 7:15 **CANADIAN CONSTRUCTION** Compliance with terms of tender, § 7:7 **DOCUMENTS COMMITTEE** Consultant, owner's interference with its (CCDC) authority, § 7:15 Standard forms Defective work, § 7:19 to § 7:23 see Appendix D Delay see Delay CAPACITY TO CONTRACT Encroachment on neighbouring lands, Generally, § 1:8 to § 1:17 § 7:25 **CERTAINTY** Failure to observe laws, regulations, Impact of arbitration clause, scale or mea-§ 7:7, § 7:21 sure, § 1:32 Failure to pay subcontractors and suppli-Misrepresentation and mistake, ers, § 7:25 distinguished from, § 1:35 Insurance, failure to obtain, § 7:15 Of subject matter of contract, § 1:32 Interference by owner, § 7:10 Oral or written contract, § 1:34 Mitigation, § 9:14 to § 9:21 general, § 9:14 **CERTIFICATE** impecuniosity, § 9:16 Authority to issue, § 6:33 to § 6:37 notice, cure and dispute resolution existence of authority re extras and clauses, § 9:18 changes, § 6:34 see also Notice of breach, cure, delay scope of authority re extras and or default changes, § 6:34 offer, obligation to accept, § 9:20 Binding, whether, § 5:7, § 6:13, § 6:35, other situations, § 9:21 § 13:13 repairs, § 9:19 failure to dispute certificate or consulrepudiation, duty to accept, § 9:15 tant's decision, § 13:13 tenders, § 9:17 Condition precedence, whether, § 6:13, Non-completion, § 7:18 § 13:16 Notice of breach, cure or default Consultant's role and authority, § 13:14 see Notice of breach, cure, delay or see Consultants default Detail and form, waiver of, § 6:13 in context of mitigation, § 9:18 Effect of owner's, consultant's conduct, Payment, failure to pay on time, § 6:9, § 6:14, § 13:9 § 7:8 conduct contrary to the contract, § 6:14 Remedies for, § 9:1 et seq. partial and unfair conduct. § 6:14 Repudiation, breach amounting to, § 8:16 Effect of progress and final certificates, see Repudiation § 6:13 duty to accept, § 9:15 Extras, § 6:13, § 6:14 Site availability, § 7:9 Final and binding, whether, § 6:13, Tendering, § 7:7, § 7:17 § 6:14, § 13:13, § 13:17 Termination of contract, amounting to Implied certificate of satisfaction with breach, § 7:14 work, § 13:15 Waiver of, § 1:69, § 4:7, § 4:25, § 4:26 Limitation period, impact on, § 6:13 What is, § 7:1, § 7:6 to § 7:25 Owner's conduct, re, § 6:13, § 13:9 **BUILDER'S LIEN** Progress payments, § 6:24 See Construction lien condition precedent, § 6:11 to § 6:14 **BUILDING CODE** form of, § 6:13, § 6:14

Right to, § 6:13, § 6:14

Compliance with, § 7:21

CERTIFICATE—Cont'd

Satisfactory completion, § **6:13**, § **6:14**, § **13:15**

Separate quantities, § 6:24

Separate stages, § 6:24

Signature, § 13:15

Substantial performance, certificate of,

§ 16:35, § 16:38, § 16:40, § 16:41, § 16:44, § 16:63, § 16:70

Surety, impact on, § 13:15

Termination of contract, based upon, § 8:2

Time for applying, reasonable, § 13:15

Validity and scope, § 13:15

Waiver of, § 6:13, § 6:14, § 13:18

When necessary, § 6:13, § 6:14, § 13:14

CHANGED, CONCEALED OR UNKNOWN CIRCUMSTANCES AND DELAYS

Claim for payment, procedures, § 6:33 Extras, distinguished from, § 6:32

Notice of claim of changed circumstances, § 6:36

Owner's conduct precluding reliance on contract, § 6:37

Payment for, § 6:32, § 6:38

contract itself provides for, § 6:38

impact on progress payments, § 6:38 quantum meruit, § 6:38

see Quantum meruit

unit price contracts, § 6:38

CHANGES IN CONTRACT

See Variations

CLUB

Generally, § 1:17

COERCION

See Duress, undue influence and coercion

COLLATERAL AGREEMENT OR WARRANTY

Effect of, § 8:11

Exclusion of, § 4:27

Extrinsic evidence, § 2:21

COMFORT LETTERS

See Letters of comfort

COMPANY

Agency, in respect of closely held or controlled companies, § 1:24

COMPANY—Cont'd

Approval of contract by all shareholder, § 1:13

Capacity to contract, § 1:13

Director agent of, § 1:13

Extra-provincial activity and licence, § 1:13

Individual or corporation, whether contract entered into by, § 1:13

Indoor management rule, § 1:13

Manager, § 1:13

May be partner, § 1:15

Officers and directors

liability under oppression section, § 10:22

liability under trust fund sections, § 16:75

Piercing the corporate veil, § 1:13

Pre-incorporation contract, § 1:13, § 1:25

Restriction on powers of, § 1:13

Seal, whether required, § 1:54

Shareholders not liable for company's contracts, § 1:13

Unanimous shareholders agreemen t, § 1:13

COMPLETION

See Performance

Time for

see Delay

CONCEALED CIRCUMSTANCES

See Changed, concealed or unknown circumstances and delays

CONDITION

Bonds, § 15:8, § 15:9

in bid bond, § 15:23

in payment bond, § 15:37

in performance bond, § 15:26

Precedent, § 6:11 to § 6:14

performance, § 5:4.50, § 5:6

Repudiation, similarity to termination for breach of condition, § 8:4

Termination of contract for breach of, § 8:4

CONSENSUS AD IDEM

Agreement on subject matter of the contract, § 1:31 to § 1:35

CONSIDERATION

Adequacy not a requirement, § 1:47

CONSIDERATION—Cont'd

Bonds, § 1:49, § 15:3

Building contracts, § 1:49

Illegal, must not be, § 1:47

Meaning of, § 1:45

Necessity for, § 1:45

Present or future, not past, § 1:48

exception for part payment accepted in full payment, § 1:48

guarantees, § 1:48

Promisee, must be given by, § 1:46

Promisor, need not be given to, § 1:46

Seal, effect of, § 1:45, § 15:3

CONSTRUCTION

See Interpretation

CONSTRUCTION ACT (NEW PROVISIONS IN 2017 ONTARIO ACT)

Joint venture may be contractor, § 1:16, § 16:22

Labour and material payment bond public contracts, § 15:44

subrogation, § 15:14

Performance bond, public contracts, § 15:25 to § 15:35

Public contracts, surety bonds for, § 15:1.70

CONSTRUCTION LIEN

Generally, § 16:16

Commencing the action, § 16:44

Conditions necessary to create

Generally, § 16:17

Supply for an owner, contractor or subcontractor

Generally, § 16:22 to § 16:25

Alternative financial and procurement arrangements, § 16:25

Landlords and tenants, § 16:23

Mortgagees, § 16:24

Relationship precluding lien, § 16:26

Supply of materials, § 16:19

Supply of services, § 16:18

Supply to an improvement, § 16:20 to § 16:21

Continuing service agreements, § 16:58

Discharge, § 16:55

Expiration, § 16:55

General lien over multiple premises,

§ 16:56 to § 16:57

CONSTRUCTION LIEN—Cont'd

Owner's interest in premises, § 16:33

Perfecting the lien, § 16:44

Postponement, § 16:55

Preserving the Lien

Generally, § 16:34 to § 16:43

Curative section, § 16:43

Forms and procedure for preserving lien by registration, § 16:40

Period for preserving lien, § 16:35

Contractor's lien preservation regime, § 16:35

Finishing work lien preservation regime, § 16:38

Other claimants' lien preservation regime, § 16:37

Workers' trust fund lien preservation regime, § 16:36

Registration, forms and procedure for preserving lien by, § 16:40

Substantial performance

Building contract, impact of substantial performance regime on, § 16:42

Certificates of, § 16:41

Determining fact of, § 16:39

Substantial performance, final completion or abandonment, determining fact of, § 16:39

Prevenient arrangements, § 16:58

Priority

Generally, § 16:48

Home buyers, § 16:53

Initial principles, § 16:49

Marshalling, § 16:54

Mortgages, building, § 16:50

Mortgages, prior, § 16:51

Mortgages, subsequent, § 16:52

Sheltering

Generally, § 16:45

Perfection or realization sheltering, § 16:46

Priority sheltering, § 16:47

Vacation, § 16:55

Value of lien

Generally, § 16:27

Building contract, impact on lien value of, § 16:31

Holdback and notice provisions, impact on lien value of, § 16:30

Price, § 16:28

CONSTRUCTION LIEN—Cont'd

Value of lien—Cont'd

Pyramid payments scheme, impact on lien value of, § 16:29

When lien arises, § 16:32

CONSTRUCTION MANAGEMENT CONTRACT

Administration of the work, § 13:12

Agency, § 6:6

Agreement, consultant's conduct amounting to owner's, § 13:12

Lien legislation, § 6:6

Nature of, **§ 6:6**

Pure v. hybrid, § 6:6

CONSULTANTS

Agent of owner, § 1:18 to § 1:26, § 13:4, § 13:12

Arbitrator, whether acting as, under building contract, § 11:2, § 13:9

Authority of, § 13:3, § 13:12, § 13:14

existence of authority re extras and changes, § 6:34

scope of authority re extras and changes, § 6:34

Consultant's certificate

see Certificate

Contractor, relationship with, § 13:6

Crown contracts, § 1:9

Decisions, whether final and binding, § 6:14, § 6:35, § 13:13

Duty of care to owner, § 13:3, § 13:5 Effect on owner's liability, § 13:3,

§ 13:12

Employed by contractor, § 13:2 to § 13:8 Estoppel, consultant's acts amounting to,

§ 13:12

Exceeding authority, § 13:6, § 13:7

Exclusion and limitation clauses in prime contract, reliance on, § 13:19

Failing to act fairly and impartially, effect of, § 6:14, § 6:35, § 13:9

Fraud, § 13:6, § 13:7, § 13:15

Functions of, under building contract, § 13:3 to § 13:5, § 13:9

Interference by, § 7:10

Interference of owner, effect of, § 13:9

Interpretation of specifications by, § 13:9, § 13:10 to § 13:18

Limitation clauses and periods, § 13:20

CONSULTANTS—Cont'd

Negligence of, § 4:9

See tort liability

Owner, contract with, § 13:1, § 13:2 to § 13:8

cost condition, § 13:3, § 13:5

entitlement to subcontract, § 13:3

implied terms, § 13:3

liability of owner due to consultant's conduct, § 13:5

Supervision of the work, § 13:11

Tort liability

contribution, apportionment and indemnity, § 13:8

liability caused to owner, § 13:3

to contractor, § 13:7

to owner, § 13:5

Tort liability to owner, § 13:5

duty of care re cost of construction, § 13:5

duty to warn, § 13:5

responsibility for sub-consultants and other persons, § 13:5

standards of care, § 13:5

Variations in work, § 13:3

Waiver, consultant's acts amounting to, § 13:12

Warranty of authority, breach of, § 13:5

CONTINGENCY ALLOWANCE

Generally, § 6:3

Subcontract, for, § 12:7

CONTRACTOR

Generally, § 1:5

Breach of contract

see Breach of Contract

Cessation of work, whether constituting abandonment, § 10:15

Consultant, relationship between, § 13:6, § 13:7

Damages, entitlement to, § 7:4, § 9:11 see Damages

Duty re performance

see Performance

Duty to warn of faulty design, § 4:52

Equitable compensation

see Quantum meruit; Unjust enrichment

Implied terms

see Implied terms and obligations

Interference by other, § 7:10

DAMAGES—Cont'd CONTRACTOR—Cont'd Payment to Causation, § 9:11 Contingencies, § 9:13 see Payment Contractor's claims **CONTRA PROFERENTEM** additional direct costs, § 9:45 See Interpretation depreciation, § 9:45 CONTRIBUTION AND INDEMNITY loss of profit, § 9:45 See Damages overhead costs, § 9:45 timing issues, § 9:45 CONTRIBUTION AND INDEMNITY BETWEEN WRONGDOERS Contribution and indemnity, § 9:4, § 13:8 Delay, § 7:11, § 7:24 Generally, § 13:8 Exclusion of right to, § 4:25 to § 4:28, **CORPORATIONS** § 4:41, § 9:28 See Company Fraud, § 4:9 **COST PLUS CONTRACT** Impecuniosity, § 9:13 Cost and fee, defining, § 6:5 mitigation, § 9:16 Extra or changed work, § 6:5 Innocent misrepresentation, § 8:10 Maximum price, § 6:5 Least onerous performance, § 9:26 Nature of, § 6:5 Limitation of, § 9:28 Records of, § 6:5 Liquidated, § 4:30, § 9:28 see Liquidated damages COSTS Impact costs, § 9:23 Measure of, § 1:31 to § 1:35, § 9:13 Mitigation of, § 9:14 to § 9:21 Whether basis for reasonable remunerageneral, § 9:14 tion, § 10:10 impecuniosity, § 9:16 **COUNTER-OFFER** notice, cure and dispute resolution Generally, § 1:40 clauses, § 9:18 **CROWN** see also Notice of breach, cure, delay Generally, § 1:9 or default Action against, § 1:9 offer, obligation to accept, § 9:20 Federal, § 1:9 other situations, § 9:21 Impact of legislative appropriation, § 1:9 repairs, § 9:19 Impact of statute law, § 1:9 repudiation, duty to accept, § 9:15 Liens, § 16:22, § 16:25, § 16:30, § 16:33, tenders, § 9:17 § 16:40, § 16:60, § 16:68 to § 16:69, Nominal, § 9:24 § 16:71 Non-performance, § 5:5 Provincial, § 1:9 Owner's claims Trust fund claims re, § 16:69 to § 16:71 contractor's abandonment or non-**CURE NOTICE** completion, § 9:37 See Notice of breach, cure, delay or contractor's delay, § 9:39 default contractor's faulty workmanship, § 9:38 **CUSTOM** seizing contractor's equipment, § 9:41

see Equipment

Punitive and aggravated, § 9:27

repudiation, § 10:12

Quantum meruit in lieu of, in the case of

Proof of loss, § 9:11

Remoteness of, § 9:12

Index-8

DAMAGES

Agents, authority of, § 1:21

Generally, § 9:9 to § 9:46

Basic principles, § 9:10

Interpretation relying on, § 2:7, § 2:20

Breach of contract, § 9:9 to § 9:46

DAMAGES—Cont'd DELAY—Cont'd Ripple, acceleration, productivity, impact Notice re delay claim claims, § 9:23 see Notice of breach, cure, delay or Set-off, § 9:35 default Reasonable time, if time not otherwise see Set-Off specified, § 4:42 to § 4:45, § 7:11, Tenders, § 9:42 § 7:24 mitigation, § 9:17 Repudiation, § 7:24, § 8:15 to § 8:21 Third party claims, § 9:24 see Repudiation Uncertainty, § 9:13 Specific remedy, § 7:24 Unjust enrichment, in lieu of in the case of repudiation, § 10:12 **DEPOSIT** see Unjust enrichment Bond, alternative to, § 15:1 Part payment, § 6:8 **DEFECTIVE WORK** Place of contract, § 1:42 Breach, defective work by contractor, DIRECTORS § 7:19 to § 7:23 Correction and default notices, § 4:22, See Company, officers and directors § 7:5 **DRAWINGS** see Breach of contract: Notice of See Plans and drawings breach. Notice to cure. Notice of default, Notice of claim for extras, **DURESS, UNDUE INFLUENCE AND** variations, delay events, COERCION compensation events, etc. Impact on intention to contract, § 1:30 Delay Rescission for, § 8:14 see Delay **EJUSDEM GENERIS** Design defect, § 7:20 See Interpretation Fitness for use or purpose, § 4:48 to § 4:54, § 7:20 **ELECTRONIC COMMUNICATIONS** General conditions, § 4:22 Time or place of sending or receipt, Repudiation, § 7:22 impact on, § 1:44 Standards, mandatory and non-mandatory, Websites, § 1:44 § 7:21 Writing or particular form, impact on, Waiver and acceptance, § 7:22 § 1:44, § 1:58 Warranty re, § 7:23 **ENCROACHMENT** time limits, § 7:23 Generally, § 7:24 whether sole remedy, § 7:23 ENFORCEABILITY OF CONTRACT Workmanship and materials, § 4:51 Generally, § 1:50 to § 1:70 DELAY **ENGINEER** By contractor, § 7:24, § 9:39 See Consultants By owner, § 7:11 Whether lien for engineering services, Caused by other party, § 7:11, § 7:24 § 16:18 Clauses, re, § 7:13, § 7:24 ENTIRE AGREEMENT CLAUSES Concurrent causes, § 7:12 See also Limitation, exclusion, waiver Exclusion of damages for, § 9:28 and entire agreement clauses Extension of time, § 4:30, § 4:35, § 7:5, Generally, § 4:27 § 7:13, § 7:24 Limitation clauses, § 4:41 **EQUIPMENT** Liquidated damages Seizure of contractor's equipment, § 9:41,

§ 12:16

see Liquidated damages

ESTIMATE

Generally, § 4:15

ESTOPPEL

Consultant's acts amounting to, § 13:12 Nature and effect of, § 1:69 Pre-tender information, § 4:7 Waiver, difference from, § 1:69

EXCLUSION CLAUSES

See Limitation, exclusion, waiver and entire agreement clauses

EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS

See Interpretation

EXPROPRIATION

Amounting to frustration, § 8:22

EXTRAS

Generally, § 6:28 to § 6:31

Arising from compulsion under contract, § 6:30

Arising from express or implied agreement, § 6:29

Authorization of, § 6:33, § 6:34

Claim for payment, procedures, § 6:33

Crown contracts, § 1:9

Onus of proof, § 6:28 to § 6:31

Owner ordering, § 6:28 to § 6:31

Owner's fault, § 6:30

Payment for, § 6:28 to § 6:31

Pre-tender information re, § 4:4

Scope of, § 6:31

Unauthorized, § 6:33 to § 6:37

Work called for in the contract,

distinguished from, § 6:29, § 6:30

Written authorization for, § 6:33 to § 6:37

EXTRINSIC EVIDENCE

Generally, § 2:15 to § 2:22

FINAL PAYMENT

See Payment

FORCE MAJEURE CLAUSE

Generally, § 7:10, § 8:22

FORFEITURE

Relief from, § 4:30

FORMATION OF CONTRACT

Generally, § 1:2 to § 1:49

FRAUD

Liability for, § 4:9, § 7:9 Punitive damages for, § 9:27 Trust fund claims, § 16:76

FRUSTRATION

Generally, § 7:9, § 8:22

GENERAL CONDITIONS

Generally, § 4:19 to § 4:35

GOOD FAITH

Contractual performance, § 1:51

Duty of fair dealing, § 7:3.50

Duty of honest performance, § 7:3.30

Duty to exercise contractual discretion, § 7:3.40

Existence of obligation, § 7:3 Organizing principle, § 7:3.20 Tendering

see Tendering

GOVERNMENT CONTRACTS

See Crown

GOVERNMENT STANDARDS

Generally, § 7:21

GUARANTEE

Bond, contract of see Bonds
Contract of, § 1:61
Guaranteed upset price, § 6:3, § 6:5
Holdback to secure, § 6:26
Necessity for seal, § 1:45 to § 1:49
Unfinished work, re, § 6:26

HOLDBACK

Construction lien statutes see Construction lien Failure to retain, § 6:26 Guarantee, re, § 6:26 Maintenance, re, § 6:26 Performance of, § 15:1 et seq. Provision in contract, § 6:26 Trust, whether held in, § 6:26

ILLEGALITY

Blue pencil test, § 1:68
Discretion and remedies, § 1:68
Illegality and frustration, § 1:68, § 8:22
Illegal performance, § 1:68
Licensing, § 1:68
Litigation agreements, § 1:68

ILLEGALITY—Cont'd

Severance, § 1:68 Unjust enrichment, § 10:1, § 10:5 to § 10:10

IMPACT COSTS

Generally, § 9:23

IMPLIED CONTRACT

Generally, § 3:16, § 4:19 to § 4:35

IMPLIED TERMS AND OBLIGATIONS

Circumstances precluding, § 4:40 Contractor, § 4:49 to § 4:54 Crown contracts, § 1:9 Exclusion and limitation, § 4:41 Fitness for purpose, § 4:52 General principles, § 4:39 Good faith and honesty, § 4:43 Homes, § 4:50 Interference, § 7:10 Owner, § 4:46 to § 4:48 Payment, § 4:46

Planning and zoning approval, § 4:44
Progress payments, determining amount
of, § 6:24

Reasonable notice, § 4:42

Site and project arrangements, § **4:47**, § **7:9**

Tax, § 4:45

Tender process, § 4:48

Time and rate of completion, § 4:53 Workmanship and materials, § 4:51, § 7:19 to § 7:23, § 9:38

INCORPORATED COMPANIES

See Company

INCORPORATION BY REFERENCE,

Generally, § 4:23, § 12:9

INDEMNITY

Damage claim, § 9:28
General conditions, § 4:24
Surety's implied right to, under bond, § 15:13

INFANT

See Minors

INJUNCTIONS

Generally, § 9:8

INSURANCE

Generally, § 14:1 to § 14:15

INSURANCE—Cont'd

Builders' risk policy, § 14:3 to § 14:6 coverage, § 14:8 exclusions and exceptions, § 14:9 insurable interest, § 14:4 unnamed insured, § 14:4

CAR policy

see builders' risk policy

CGL policy

see liability policy

Duty to defend, § 14:15

Insurance clause in building contract contractual obligation, § 14:12 failure to obtain insurance specified in, § 14:13

impact on rights of owner, contractor, etc., § 14:14

main features, § 14:2

Interpretation of policy, § 14:11

Liability policy, § 14:7 to § 14:10

coverage, § 14:8

exclusions and exceptions, § 14:9

revisions, § 14:10

Subcontracts, insurance consequences, § 12:3 to § 12:5

INTENTION TO CONTRACT

Generally, § 1:28 to § 1:30

INTEREST

Compound interest, § 6:10 Cost of work, whether, § 6:10 Damages, interest, § 6:10 Lien, whether claimable, § 16:28

INTERFERENCE

Generally, § 4:47, § 7:10

INTERPRETATION

Ambiguities, § 2:16
Associated words, § 2:11
Basic princples, § 2:3 to § 2:14
Certificate, binding effect of, § 5:7, § 6:13, § 6:14, § 6:24, § 6:37, § 13:17

Commercially sensible, § 2:5 Consultant's powers, § 5:7, § 6:13, § 6:14, § 6:24, § 6:37, § 13:13

Contra proferentem, § 2:8

Contrary to propounder of document, § 2:8

Ejusdem generis, § 2:9

Owner's interest in premises, § 16:33

LEGISLATION—Cont'd INTERPRETATION—Cont'd Entire agreements clause, § 2:19 Holdbacks Evidence of the full contract, § 2:22 Generally, § 16:59 Agreements affecting lien claim, Exemption clause, § 2:14 § 16:66 Expressio unius est exclusio alterius, Amount and permissible form of, § 2:10 Extrinsic evidence, § 2:15 to § 2:22 § 16:60 Building contract, impact of holdback for another purpose than interpretation, provisions on, § 16:65 § 2:21 Holdback charge or lien, § 16:68 Inconsistencies, § 2:4 Holdback rights, no reduction of, Negotiated provision, interpretation of, § 2:12 § 16:62 Notice of lien and notice holdback, Negotiations, use for interpretation, § 2:17 **§ 16:64** Payment of, § 16:61 Noscitur a sociis, § 2:11 Release, § 16:66 Numbers and words, § 2:4 Set-off, § 16:66 Objective intention of the parties, § 2:3 Substantial performance, final comple-Parties' definitions, § 2:3 tion or abandonment, determining Post-contract conduct, § 2:18 fact of, § 16:67 Preserving agreement, § 2:6 Two holdback periods, § 16:63 Printed and written provisions v. standard Two holdbacks, § 16:63 or pre-printed form, § 2:12 Waiver, § 16:66 Specific and general references, § 2:9 Informational rights, § 16:80 Specific reference and alternatives, § 2:10 Joint venture may be contractor, § 1:16, Specific words, § 2:2 § 16:22 Surrounding circumstances, § 2:16, Jurisdiction, § 16:2 § 2:20 Liens Tautology, presumption against, § 2:13 Generally, § 16:16 Technical or trade meaning, § 2:6, § 2:7 Commencing the action, § 16:44 Tendency towards strict, § 1:69 Conditions necessary to create Ut res magis valeat quam pereat, § 2:6 Generally, § 16:17 INTOXICATED PERSONS Supply for an owner, contractor or Capacity to contract, 1:11 subcontractor Generally, § 16:22 to § 16:25 INVITATION TO BID Alternative financial and procure-See Tendering, invitation to tender ment arrangements, § 16:25 Landlords and tenants, § 16:23 JOINT LIABILITY, CONTRIBUTION AND INDEMNITY BETWEEN Mortgagees, § 16:24 CONTRACTOR AND Relationship precluding lien, **CONSULTANT** § 16:26 Supply of materials, § 16:19 Generally, § 13:8 Supply of services, § 16:18 JOINT VENTURE Supply to an improvement, § 16:20 Capacity to contract, § 1:16, § 16:22 to § 16:21 Continuing service agreements, § 16:58 Discharge, § 16:55 Contracts affecting, § 1:57, § 1:59 Expiration, § 16:55 LEGISLATION General lien over multiple premises, § 16:56 to § 16:57 Generally, § 16:1

Contracting out, prohibition of, § 16:3

LEGISLATION—Cont'd	LEGISLATION—Cont'd
Liens—Cont'd	Liens—Cont'd
Perfecting the lien, § 16:44	Value of lien—Cont'd
Postponement, § 16:55	Pyramid payments scheme, impact
Preserving the Lien	on lien value of, § 16:29
Generally, § 16:34 to § 16:43	When lien arises, § 16:32
Curative section, § 16:43	Other legal rights, § 16:4
Forms and procedure for preserving	Prompt Payment
lien by registration, § 16:40	Generally, § 17:1
Period for preserving lien, § 16:35	Deadlines
Contractor's lien preservation regime, § 16:35	Contractual payment conditions, effect on, § 17:8
Finishing work lien preservation regime, § 16:38	Effect of on contractual payment conditions, § 17:8
Other claimants' lien preservation regime, § 16:37	To pay or dispute payment, § 17:4 to § 17:8
Workers' trust fund lien preservation regime, § 16:36	28/14/7/7 Payment Schedule, § 17:4
Registration, forms and procedure for preserving lien by, § 16:40	Contractor to subcontractor, § 17:5
Substantial performance	Interest on late payments, § 17:7
Building contract, impact of	Late payments, interest on, § 17:7
substantial performance	Subcontractor to subcontractor,
regime on, § 16:42	§ 17:6
Certificates of, § 16:41	Triggering of, § 7:3
Determining fact of, § 16:39	Timelines, overview of, § 17:2
Substantial performance, final completion or abandonment,	Remedies
determining fact of, § 16:39	Generally, § 16:5 to § 16:15
Prevenient arrangements, § 16:58	Contractors, statutory rights and reme-
Priority	dies of
Generally, § 16:48	Generally, § 16:5
Home buyers, § 16:53	Adjudication system, § 16:12
Initial principles, § 16:49	Holdbacks, § 16:7
Marshalling, § 16:54	Informational right, § 16:10
Mortgages, building, § 16:50	Liens, § 16:6
Mortgages, prior, § 16:51	Prompt payment obligations, § 16:11
Mortgages, subsequent, § 16:52	Statutory trust, § 16:8
Sheltering	Trustee, appointment of, § 16:9
Generally, § 16:45	Owners, statutory rights and remedies
Perfection or realization sheltering, § 16:46	of Common law rights, maintaining,
Priority sheltering, § 16:47	§ 16:14
Vacation, § 16:55	Contractual rights, maintaining,
Value of lien	§ 16:13
Generally, § 16:27	Holdback, set off-off rights against,
Building contract, impact on lien	§ 16:15
value of, § 16:31	Owner liability, limited, § 16:15
Holdback and notice provisions,	Set-off rights against holdback,
impact on lien value of, § 16:30	§ 16:16
Price, § 16:28	Trustee, appointment of, § 16:79

LEGISLATION—Cont'd

Remedies—Cont'd

Trust remedy

Generally, § 16:69

Amounts in trust fund, § 16:71

Amounts to which trust fund applies, § 16:72

Appointment of trustee, § 16:79

Corporate trustees, liability of those in control of, § 16:75

Deposits and records, § 16:73

Directors, liability of, § 16:75

Equitable and other claims related to trust fund provisions, § 16:76

Liability of officers, directors and those in control of corporate trustees, § 16:75

Limitation period for trust fund claims, § 16:77

Notice of lien, impact of on trust fund claim, § 16:78

Officers, liability of, § 16:75

Payments, credits and set-offs, § 16:74

Trustee, appointment of, § 16:79
Trustees and beneficiaries of trust fund obligations, § 16:70

LETTER OF CREDIT

Alternative to bond, § 15:1.30

LETTERS OF COMFORT

Impact on intention to contract, § 1:29

LETTERS OF INTENT

Impact on intention to contract, § 1:29

LIEN

See Construction lien

LIMITATION, EXCLUSION, WAIVER AND ENTIRE AGREEMENT CLAUSES

Generally, § 4:25 to § 4:28, § 9:28 Implied terms, re, § 4:41

LIMITATION PERIOD

Generally, § 9:3 to § 9:6

Arbitration, § 9:4, § 11:10

Consultant's certificates, impact of, § 6:13

Contract limitation periods, § 4:29, § 9:5

Contracts under seal, § 1:53

LIMITATION PERIOD—Cont'd

Contribution and indemnity, claims for, § 9:4, § 13:8

Discovery date, § 9:4

Mediation, § 11:33

Statutory limitation periods, § 9:4

Subcontracts, impact on, § 12:8

Tender, claims under, § 9:4

Trust fund claim, § 16:77

Ultimate limitation period, § 9:4

LIQUIDATED DAMAGES

Actual damages, in relation to, § 4:32

Agreement to vary, § 9:31

Clause permitting extension of time to complete, § 9:30

Completion by owner, § 9:31

Delay, § 7:12

Enforceability of, § 4:30

Incorporation by reference, § 4:34

Nature and validity of, § 4:30

Notice of claim for delay or damages, effect of giving or failing to give, § 9:30

Other remedies, distinguished from, § 4:33

Owner's conduct re, § 4:31, § 7:9, § 9:30

Penalties, distinguished from, § 4:31

Prevention, § 9:30

Site availability and condition, § 7:9

Subcontracts, § 4:34

Waiver, § 9:31

LUMP SUM, PROVISION FOR SUBCONTRACTS IN MAIN CONTRACT

Generally, § 12:7

LUMP SUM CONTRACT

Allowances and contingencies, in lump sum contract, § 6:3

guaranteed upset price, § 6:25

instructions not to perform all the work,

§ 6:3

nature of, § 6:3

quantities re, § 4:17

MAINTENANCE

Period of guarantee, § 4:35, § 6:26, § 7:23

MATERIALS

Defective, § 7:23

MATERIALS—Cont'd

Implied obligations re, § 4:51 Lien for see Construction lien Ouantities, § 4:15

MECHANICS' LIEN

See Construction lien

MEDIATION

Arbitration or litigation, whether mediation required before, § 11:10
Confidentiality, § 11:32
Limitation issues, § 11:33
Med-arb, § 11:30
Mediation agreement, enforceability of, § 11:31
Mediator's role, § 11:30
Nature of, § 11:1, § 11:29

MEMORANDUM IN WRITING

Generally, § 1:57 to § 1:62

MENTALLY INCOMPETENT PERSON

Capacity to contract, § 1:11
Committee's capacity to contract, § 1:11

MINORS

Capacity to contract of, § 1:10
Entitlement to repudiate contract, § 1:10
Whether contract is void or voidable,
§ 1:10

MISREPRESENTATION

Agreement on subject matter, impact of misrepresentation, § 1:35

Collateral warranty, § 8:11

Exclusion of liability for, § 4:25

Extrinsic evidence, § 2:15 to § 2:22

Fraudulent, § 8:9

Innocent, § 8:10

Negligent, § 4:9, § 8:12

Rescission for, § 8:8

MISTAKE

Generally, § 1:31 to § 1:35, § 8:13, § 8:14

Agreement on subject matter, impact of mistake, § 1:35

Mutual, and rectification, § 2:24

Owner and contractor, mistake between, § 4:9

Rectification and the limitation period, § 2:27

MISTAKE—Cont'd

Rectification of building contract, § 2:26 Rescission for, § 8:13 Tenders, § 2:26, § 3:13 Unilateral, and rectification, § 2:25

MITIGATION OF DAMAGES

See Damages

MUNICIPAL CORPORATIONS

Capacity to contract, § 1:14 Quantum meruit claim against, § 1:14 Whether bylaw is essential, § 1:14

NECESSARIES

Purchase by minors of, § 1:10

NEGLIGENCE

And breach of contract, § 7:2 By consultant, § 13:5, § 13:7 Negligent misrepresentation see Misrepresentation

NEGOTIATED PROVISION

Interpretation of, § 2:12

NEGOTIATION

Impact on certainty of subject matter, § 1:32

Impact on intention to contract, § 1:29 Mediation see Mediation

NEW HOME WARRANTY

Generally, § 1:70, § 4:50

NON EST FACTUM

Generally, § 1:33

NOSCITUR A SOCIIS

See Interpretation

NOTICE OF BREACH, NOTICE TO CURE, NOTICE OF DEFAULT, NOTICE OF CLAIM FOR EXTRAS, VARIATIONS, DELAY EVENTS, COMPENSATION EVENTS, ETC.

Generally, § 4:22, § 6:36, § 6:37, § 7:5, § 9:7, § 9:29

Claim for damages, § 9:7, § 9:11 delay claim, § 4:30, § 6:36 extension of time, § 7:5 failure to provide proper notice, § 7:5.50

NOTICE OF BREACH, NOTICE TO CURE, NOTICE OF DEFAULT, NOTICE OF CLAIM FOR EXTRAS, VARIATIONS, DELAY EVENTS, COMPENSATION EVENTS, ETC.—Cont'd

Claim for damages, § 9:7, § 9:11—Cont'd impact of owner's conduct, § 6:37 impact on monetary claims, § 6:36, § 7:5

mitigation, § 9:18 terms re, § 4:22

NOTICE OF CLAIM OF CHANGED CIRCUMSTANCES

Generally, § 6:32 to § 6:37

NOVATION

Generally, § 1:25

OBJECTIVE THEORY OF CONTRACT

Generally, § 1:2 to § 1:49

OFFER

Agreement to keep offer open, § 1:38 Communication of, § 1:28 to § 1:30, § 1:36 to § 1:44

Form, § 1:37

Invitation to treat, distinguished from, § 1:39

Irrevocable, § 1:38, § 3:3

Lapse, termination or revocation of, § 1:37

Method of acceptance

see Acceptance of offer

Mitigation, acceptance in the context of, § 9:20

Rejection of

see Acceptance of Offer

Tender, nature of offers in, § 1:37 to § 1:39, § 3:2, § 3:3

see Tendering

OFFER AND ACCEPTANCE

Generally, § 1:36

OFFICERS AND DIRECTORS

See Company

ONTARIO CONSTRUCTION ACT

See Construction Act

OPPRESSION

Generally, § 10:22

ORAL CONTRACT

Impact on certainty of subject matter, § 1:34

OVERHEAD

Generally, § 6:5

Cost plus contract, impact on, § 6:5 Element of damages, § 9:11 to § 9:23, § 9:44 to § 9:46

Unit price contract, impact on, § 6:4

OWNER

Generally, § 1:4

Abandonment of contract by, § 10:11 to § 10:15

Breach of contract

see Breach of contract

Construction liens applied to, § 16:22 to § 16:25, § 16:33

see Construction lien

Consultant, relationship with, § 13:3 to § 13:5

Damages, entitlement to, § 7:16 to § 7:25, § 9:36 to § 9:43

see Damages

Delay, § 7:11

see Delay

Implied terms re

see Implied terms and obligations

Interference by, § 7:10

Payment by

see Payment

Satisfaction of, § 5:5

Site conditions, § 7:9

Tort liability

see Tort

Wrongful termination by, § 7:14

PARTIES

Capacity, § 1:8 to § 1:17

Contractor, § 1:5

Identifying, § 1:3 to § 1:27

Number of, § 1:3 to § 1:27

Owner, § 1:4

Subcontractor, § 1:6

Whether only parties can sue or be sued, § 9:2

see Third parties to contracts

PARTNERSHIP

Generally, § 1:15

Registration of, § 1:15

PAYMENT	PAYMENT—Cont'd
Generally, § 6:1 to § 6:38	Progress payments, § 5:4.70, § 6:7 to
Advance, § 6:7 to § 6:23	§ 6:24 —Cont'd
Breach or repudiation, § 6:9	separate quantities, § 6:24
Changed, concealed or unknown circum-	separate stages, § 6:24
stances, payment re	set-off or counterclaim for remedial or
see Changed, concealed or unknown	completion costs, § 6:24
circumstances and delays	see Set-off
Condition precedent to, § 6:11 to § 6:14	value of work, separate quantities,
Construction management	§ 6:24
see Construction management contract	Prompt payment, § 6:15 to § 6:23, § 17:1
Consultant's certificates	to § 17:8
see Consultants	alternative financial and procurement arrangements and special purposes
Cost plus contract	entities, § 6:22
see Cost plus contract	contractor and subcontractor level,
Currency, § 6:1 to § 6:6	§ 6:17 to § 6:19
Deposit, § 6:8	other considerations, § 6:23
Extras	owner and contractor level, § 6:16
see Extras	subcontractor and sub-subcontractor
Final, § 6:25	level, § 6:20
final certificate and release, § 6:25	tracking the payment and notices of
lien legislation, § 6:25	non-payment, § 6:21
Holdback	Refusal of, § 6:7 to § 6:23, § 7:1
see Holdback	Right to, § 5:1, § 6:7 to § 6:24, § 13:1
Interest, § 6:10	withhold, § 5:1, § 6:7 to § 6:23, § 7:2
Lien statutes	Set-off
see Construction lien	see Set-off
Lump sum	Subcontractor, claim from owner, § 12:16
see Lump sum contract	Substantial performance, payment upon
Methods of, § 6:1 to § 6:6	see Construction lien
Partial completion, § 5:4.70, § 5:6	Time of, § 6:7
Part payment, § 6:8	waiver of, § 6:7
Payment bond	Underpayment, § 6:7, § 7:8
see Bonds	Unit price contract
Payment for extras, changed circum-	see Unit price contract
stances and delays, § 6:38	Whether contract is lump sum, cost plus,
Pay when paid and pay if paid clauses,	unit price, § 6:2
§ 6:12, § 15:41	PAY-WHEN-PAID OR PAY-IF-PAID
lien legislation, impact of, § 6:11 to § 6:14	CLAUSES
Periodic	See Payment
	PENALTY CLAUSES
contractor's entitlement to, § 5:4.70 time and conditions for, § 6:26	See Liquidated damages
· -	See Liquidated damages
Progress payments, § 5:4.70, § 6:7 to § 6:24	PERCENTAGE OF COMPLETION
implied terms re, § 6:24	Progress payments based on, § 5:4.70,
lien legislation, § 6:24, § 16:31,	§ 5:5 to § 5:7
§ 16:76	see Payment
see Construction lien	PERFORMANCE
right to 8 5:4 70 8 5:6 8 6:7 to 8 6:24	Generally 8 5:1 to 8 5:9

PERFORMANCE—Cont'd Abandonment, § 5:4.60 Additional work, § 5:4.60 Change in circumstances, § 6:32 to § 6:37 Condition precedent to payment, § 5:4.50, § 5:7, § 6:11 to § 6:14 Consultant's role in determining, § 5:7, § 6:13, § 6:14, § 13:14 improper conduct of owner, § 5:7, § 6:13, § 6:14, § 13:9, § 13:15 Contractor excused from, § 5:5 Contractor's responsibility for, § 5:2 Deduction for unfinished work, § 5:6 Defective, § 5:6, § 7:19 to § 7:23, § 9:36 to § 9:43 Destruction by fire, § 5:4.70 see Insurance Determining, § 5:7 Entire, § 5:4.60 Extras see Extras Failure, amounting to breach or repudiation, § 5:9 justified reasons for default, § 5:5 owner's failure to perform mutual obligations, § 5:5 Method and means, contractor's choice of. § 5:2 Minor defects in, § 5:4.60 counterclaim for damages, § 5:4.60, § 5:6 Nature and degree, § 5:4 deduction for, § 5:6 Non-completion, § 7:18, § 9:37 Non-performance, § 5:5, § 7:18, § 9:37 acceptance of, § 5:5 justified reasons for, § 5:5 Partial work or portion of work, payment for, § 5:4.70, § 5:6 Performance bond see Bonds Periodic or progress payments for, § 5:4.70, § 5:6 Result, contract for, result, § 5:4.40 Services, contract for, § 5:4.30 Substantial, § 5:6 construction lien, § 16:39 to § 16:42, § 16:67 see Construction lien deduction for defective work, § 5:6 minor or trivial defects, § 5:4.60, § 5:6

PERFORMANCE—Cont'd

Substantial, § 5:6—Cont'd
past practice, § 5:6

Termination of further performance of the
contract by, § 8:7

Total completion, § 5:4.60

Use by owner, § 5:4.60

Waiver of, § 5:5, § 5:7

PLANS AND DRAWINGS

Inconsistencies, § 2:4 Terms re, § 4:38

PRE-ENGINEERING

Generally, § 4:13

PRE-TENDER INFORMATION

Generally, § 4:2 to § 4:18

PRINCIPAL

Disclosed, § 1:23 Non-existent, § 1:25 Undisclosed, § 1:23

PRIVITY OF CONTRACT

See Third parties to contracts

PROFIT

Element in unit price contract, § 6:4
Element of damages, § 9:13, § 9:36 to
§ 9:46

Uncertainty and contingency of, § 9:13

PROGRESS PAYMENTS

See Payment

PROMPT PAYMENT

Generally, § 17:1

Deadlines

Contractual payment conditions, effect on, § 17:8

Effect of on contractual payment conditions, § 17:8

To pay or dispute payment, **§ 17:4 to § 17:8**

Contractor to subcontractor, § 17:5 Interest on late payments, § 17:7 Late payments, interest on, § 17:7 28/14/7/7 Payment Schedule, § 17:4 Subcontractor to subcontractor, § 17:6

Triggering of, § 17:3
Timelines, overview of, § 17:2

PROVINCIAL CONSTRUCTION LEGISLATION

See Legislation

PROVISIONAL CONTRACT

Generally, § 3:14

OUANTITIES

Pre-tender information, § 4:15

QUANTUM MERUIT

Abandonment of contract, § 10:15
Acceptance of work, obligation to pay,
§ 5:4.70

Benefit, § 10:9

Changes in nature of work, § 6:32 to § 6:37, § 9:45, § 10:14

Contract, quantum meruit claim in the absence of, § 10:7, § 10:17

Contract, quantum meruit claim in the presence of, § 10:6

Extras, § 6:28 to § 6:31, § 6:38, § 10:4 see Extras

Implication of payment, § 10:8

In lieu of damages in the case of repudiation, § 8:19, § 10:12

Meaning and principles of, § 10:5 to § 10:10

Payment, implied obligation of timely payment, § 4:47

Principles of, § 10:5 to § 10:10

Reasonable remuneration, § 10:10

Void, ineffective or rescinded contract, § 10:18

QUANTUM VALEBAT

See Quantum meruit

QUASI-CONTRACT

Generally, § 10:1

QUOTATION

Evidence for qunatum meruit claim, § 10:10

Tender, contrast to, § 3:2, § 3:3, § 3:12

RATIFICATION

Generally, § 1:22

RECTIFICATION

Building contracts, § 2:26 Knowledge of mistake, § 2:26 Legal interpretation, mistaken, § 2:26 Limitation period, § 2:27 Misrepresentation, § 2:25

RECTIFICATION—Cont'd

Mutual mistake, § 2:24 Third parties, § 2:26 Unilateral mistake, § 2:25

RELIEF AGAINST FORFEITURE

See Forfeiture

REPUDIATION

Acceptance of, choice and effect of, § 8:17, § 8:18

Meaning of, § 4:3, § 8:16

Mitigation, § 9:15

Payment, failure to pay on time, § 6:9

Performance, failure of amounting to breach or repudiation, § 5:9

Termination by contractor on owner's repudiation, § 8:21

Termination by owner on contractor's repudiation, § 8:20

Termination of contract for, § 4:3, § 8:15 to § 8:21

anticipatory breach of contract, § 8:16 similarity to breach of condition, § 8:16

RESCISSION

Generally, § 8:8 to § 8:14

Duress, undue influence and unconscionable conduct, § 8:14

Extrinsic evidence, § 2:15 to § 2:22

Misrepresentation, termination of contractual performance for, § 8:8 fraudulent misrepresentation, § 8:9 innocent misrepresentation, § 8:10

Mistake, § 8:13

Termination of contract by, § 8:8 to § 8:14

RIPPLE DAMAGES

Generally, § 9:23

SALE OF GOODS, BUILDING CONTRACT DISTINGUISED FROM

Generally, § 1:1, § 9:41, § 12:16

SEAL

Crown corporations, municipalities, § 1:55

Effective on signing by company, § 1:54 Effect of, § 1:45

Guarantees or amendments, § 1:52

Impact on privity of contract rule, § 1:27

Limitation period, impact on, § 1:53

SEAL—Cont'd

Necessity or lack of necessity for, § 1:45, § 1:52

Rights and evidence, § 1:56

Tenders, § 1:52

Termination by subsequent agreement, **§ 8:5**

What constitutes, § 1:45

SEIZURE OF EQUIPMENT

See Equipment

SERVICES, LIEN FOR

See Construction lien

SET-OFF

Contract provisions re, § 6:27 Entitlement to, § 6:27 Trust fund, re, § 16:74

SIGNATURE

Generally, § 1:57 to § 1:62

SITE

Availability and condition, § **4:10 to** § **4:14**, § **7:9**

Conditions

information as to, § 4:10 to § 4:14 satisfaction by contractor as to, § 4:10 to § 4:14

Force majeure, § 7:10 Implied obligations re, § 4:47 Owner, liability for, § 7:9, § 7:10 Planning and zoning, § 4:44

Sharing, § 7:10

Soil conditions

see Soil conditions

Utilities and obstructions, § 7:10

SOCIETIES AND CLUBS

Capacity to contract, § 1:17

SOIL CONDITIONS

Consultant's liability, § 13:5, § 13:7 Pre-tender information, § 4:13

SPECIAL CONDITIONS

Generally, § 4:36

SPECIFICATIONS

Generally, § 4:37 Absence of, § 4:37

Deviation from, § 4:37, § 5:6

Guarantee of by contractor, § 4:37

Inconsistencies in, § 4:37

Index-20

SPECIFICATIONS—Cont'd

Incorporation in subcontract, § 12:9

Interpretation, § 4:37

Part of contract, § 4:37

Standard of work, § 5:6

Whether implied warranty as to, § 4:37

SPECIFIC PERFORMANCE

Generally, § 9:8

STANDARD FORMS

Cost plus contract, APP D3

Fixed price contract, APPA § A:1 to

APP A § A:11

Inquiries as to, § 1:1 et seq., APP D

Subcontract, APP D3

Unit price contract, APPA § A:1 to APP

A § A:11

STATUTE OF FRAUDS

Generally, § 1:57 to § 1:62

STRIKE

Generally, § 7:18, § 8:22

SUBCONTRACT AND SUBCONTRACTORS

Generally, § 1:7, § 12:1 to § 12:17

Agency, distinguished from, § 1:2 to

§ 1:49, § 12:7, § 12:8

Approval of, by owner, § 12:6, § 12:7

Assignment, distinguished from, § 12:2

Duty of care of owner to subcontractor, § 12:3

Duty of care of subcontractor to owner, § 12:4

Entitlement to subcontract or approve subcontractors, § 12:6

Equipment and materials, right to remove, § 9:41, § 12:16

Exclusion and limitation clauses, application to, § 12:8

Incorporation of prime contract, § 12:9

Insurance, impact on subcontractors,

§ 12:5, § 12:8, § 14:2, § 14:12, § 14:14

Interpretation, § 12:8

Joint venture, contractor and subcontractor being in a, § 12:8

Lien rights, § 16:1 et seq.

Liquidated damages, § 4:33

Lump sum for subcontracts, § 12:7

Nature of, § 12:1, § 12:8, § 12:15

SUBCONTRACT AND	TAX
SUBCONTRACTORS—Cont'd	Generally, § 4:45
Nominated subcontractor, § 12:7	TENDERING
Not party to main contract, § 1:3 to	Bid depository
§ 1:27, § 12:8, § 12:15	nature of, § 3:16
Owner, relationship with, § 12:15,	relationship to tender documents,
§ 12:16	§ 3:16
Payment of	Bid-rigging, § 3:18
claim against owner, § 12:16	Bid-shopping, implied term against, § 3:5
condition precedent as to, § 6:11 to § 6:14	Compliance
deposit or part payment, § 6:8	compliant bid, whether duty to accept
guarantee distinguished from indemnity	only, § 3:7
or direct agreement to pay,	elements of, § 3:2
§ 12:16	necessity for, § 3:3
pay when paid clause, § 6:12, § 12:8	Contract A
Prime contractor, relationship to, § 12:8	rights not arising under, § 3:11
to § 12:14	terms of, § 3:4 Contract B
Provision for subcontracts in main	negotiation of, whether permissible,
contract, § 12:7	§ 3:14
Rights and obligations of, in relation to	terms of, § 3:14
owner, § 12:15	when arising, § 3:14
Rights and obligations of, in relation to	Examine behind the bids
prime contractor, § 12:8 Right to subcontract, § 12:6	consequences of doing so, § 3:7, § 3:11
Site, sharing, § 7:10	whether there is a duty to, § 3:7, § 3:11
Tenders, § 3:15, § 12:11	Fair treatment, duty of, § 3:3 to § 3:5
Existence of Contract A, § 12:13	Implied terms
Reasonable excuse not to enter into	accept compliant bid, whether there is a
subcontract, § 12:14	duty to, § 3:7, § 3:9
Termination or variation of prime	accept the lowest tender, whether there
contract, § 12:10	is a duty to, § 3:8 bid-shopping, whether there is a duty
Tort and insurance consequences of,	not to, § 3:5
§ 12:3 to § 12:5	examining behind bid
SUBJECT MATTER	see examine behind the bids
Agreement or failure to agree on, § 1:31	fair treatment, duty of, § 3:3 to § 3:5
to § 1:35	Invitation to tender, wording of, § 3:4
	distinction from request for proposal,
SUBJECT TO CONTRACT	§ 3:2, § 3:3, § 3:12
Impact on intention to contract, § 1:29	Irregularity and formality, entitlement of
SUB-SUBCONTRACTOR	owner to waive, § 3:9
Generally, § 12:17	Irrevocable, § 3:2
Generally, § 12.17	Late tenders, § 3:5
SUPERVISION	Legal nature of, § 3:2, § 3:3
Consultant, authority of, § 13:11	Lowest tender, whether there is a duty to accept, § 3:8
Consultant's contract with owner re,	Misrepresentation and fraud, § 3:11
§ 13:3	Mistake in tender, § 3:13
SUPPLIER	Offer and acceptance in, § 3:2, § 3:3
See Construction lien	Pre-qualified bidders, § 3:5
See Construction nen	1 10 qualified biddets, 8 3.5

TENDERING—Cont'd

Pre-tender information, § 3:12, § 4:2 to § 4:18

Privilege clause

impact of customs or standards, § 3:9 impact on implied terms, § 3:9

irregularity and formality clauses, difference from, § 3:9

nature and effect of, § 3:9

subcontractors, § 3:15

Rectification, § 2:26

Request for proposal, difference from true tender, § 3:2, § 3:3, § 3:12

Secret preference, § 3:9

Subcontractors

contract A-contract B, application to, § 3:15

contractor's duty of fairness, § 3:15 duty of care, § 3:15

existence of Contract A, § 3:15, § 12:13

obligation to award subcontract, § 3:15 privilege clause, § 3:15

reasonable excuse not to enter into subcontract, § 3:15, § 12:14

refusal of subcontractor to perform, § 3:15

Withdrawal of tender, whether possible, § 3:3, § 3:13

TERMINATION OF CONTRACTUAL PERFORMANCE

Generally, § 8:1 to § 8:22

Certificate, based upon, § 8:2

Condition, termination for breach of, § 8:4

Express right of termination, § 8:2

Forfeiture, right of, § 8:2

Frustration

see Frustration

Good faith, § 1:51

Implied right of termination, § 8:3

Novation, termination by, § 8:6

Performance, termination by, § 8:7

Remedies, termination of contract not affecting, § 8:1, § 8:4, § 8:7

Repudiation

see Repudiation

Rescission

see Rescission

TERMINATION OF CONTRACTUAL PERFORMANCE—Cont'd

Subsequent agreement, termination by, § 8:5

Waiver of, § 8:2

Wrongful, § 7:14

failure to consider extension, § 7:14 failure to proceed with the work, § 7:14 repudiation, § 8:19

TERMS

Generally, § 4:1 to § 4:54

Assignment, § 4:22

Default notices and defective work, § 4:22

see Notice of breach, cure, delay or default

Delay, clauses, § 7:13

see Delay

Entire agreement and no reliance clauses, § 2:19, § 4:27

General conditions, § 4:19 to § 4:35 Implied

see Implied terms and obligations

Incorporation by reference, § 4:23, § 12:9

Indemnification clauses, § 4:24

Interpretation of, § 2:1 et seq.

Limitation, exclusion and waiver clauses, § 4:25 to § 4:28, § 9:5

Limitation period in, § 4:29

Liquidated damages, § 4:30

see Liquidated damages

Negotiation of, § 1:29, § 1:32, § 2:17

Plans and drawing, § 4:38

Pre-tender information, § 4:2 to § 4:18

Quantities, § 4:15 to § 4:17

Site conditions, § 4:10 to § 4:14

Special conditions, § 4:36

Specifications, § 4:37

Warranties, § 4:35

see Warranty

THIRD PARTIES TO CONTRACTS

Damages, recovery on behalf of third parties, § 7:4, § 9:24

Deeds and seal, § 1:27, § 1:56, § 7:4, § 15:33

Defensive reliance on contract, § 1:27, § 7:4

Enforcing the contract for the benefit of, § 9:2, § 9:24

Enterprise liability, § 7:4, § 9:24

THIRD PARTIES TO CONTRACTS —Cont'd

Exclusion in the contract of third party rights, § 1:27, § 4:26

Identified as a person entitled to enforce contract, § 1:27

Innocent party enforcing the contract for the benefit of, § 7:4

Innocent party exercising contractual rights to benefit, § 7:4

Party to contract by conduct, § 1:27

Privity of contract, § 1:27

exceptions to privity of contract, § 1:27, § 7:4, § 9:24

TIME

Payment

see Payment

Zones, for place of contract, § 1:42

TORT

Apportionment, § 13:8

Consultants, § 13:5, § 13:7

Contract liability, § 4:9, § 7:2

Damages, difference from contract, § 9:10

Fraud, § 7:3

Liability in, § 7:2, § 9:1 et seq.

Limitation period, § 9:3 to § 9:6

Subcontracts tort consequences of, § 12:3 to § 12:5

TRUST FUND UNDER LIEN STATUTES

See Construction lien

UNILATERAL CONTRACT

Generally, § 1:43

UNIT PRICE CONTRACT

Adjustment of unit prices, § 6:4

Nature of, § 6:4

Non-compliance, § 6:4

Overhead and profit, § 6:4

Quantities re, § 4:17

UNJUST ENRICHMENT

Generally, § 10:1 to § 10:22

Abandonment of the contract, § 10:15 cessation of work, whether constituting abandonment, § 10:15

Builders' and construction lien claims, contradiction with, § 10:4

UN.JUST ENRICHMENT—Cont'd

Changed or different circumstances, claim arising from, § 10:14

Compensation, assessing, § 10:13

Contract, no contractual method or amount of payment, § 10:13

Contract claims, contradiction with, § 10:4

Contract ineffective, void or rescinded, § 10:18

Elements of the claim, § 10:3

No contract, unjust enrichment claim,

§ 10:16 to § 10:18

Principles of, § 10:2

Quantum meruit, § 10:2, § 10:5 to § 10:10

see Quantum Meruit

Remedies, § 10:19

Repudiation, claim in the alternative to, § 10:12

Unknown circumstances

see Changed, concealed or unknown circumstances

UTILITIES

Relocation of, § 4:2 to § 4:18

UT RES MAGIS VALEAT QUAM PEREAT

See Interpretation

VACATION PAY

Part of costs, in cost plus contract, § 6:5

VARIATIONS

Consideration, § 1:66

Discretionary clauses, § 1:65

Mutual consent to amend, § 1:63

Mutual consent to terminate, § 1:64

Termination for convenience, § 1:65

Written change orders, § 1:67

WAGES

Increase in, § 7:18

WAIVER

Claims, waiver of, § 1:69, § 4:25 to § 4:28

Clauses re

see Limitation, exclusion, waiver and entire agreement clauses clauses

Consultants, acts amounting to, § 13:12

Defective work or materials, § 7:22

Estoppel, difference from, § 1:69

WAIVER—Cont'd

Nature and effect of, § 1:69 Payment, waiver of time for, § 6:7 see Payment Performance, waiver of, § 5:5, § 5:7 see Performance

Pre-tender information, re, § 4:7

WARRANTY

Collateral warranty see Collateral agreement or warranty Implied, § 4:50 to § 4:52 Terms re, § 4:35, § 7:23

WITHOUT PREJUDICE DISCUSSIONS

Impact on intention to contract, § 1:29

WORKERS' COMPENSATION

Part of costs in cost plus contract, § 6:5

WRITING AND WRITTEN **CONTRACT**

Contracts not to be performed in a year, § 1:62

WRITING AND WRITTEN CONTRACT—Cont'd

Electronic documents, § 1:58 Guarantees, § 1:61 Impact on certainty of subject matter, § 1:34 Land, sale of, § 1:59

Necessity or lack of necessity for writing, § 1:57, § 1:63

Oral variations, § 1:62

Part performance, § 1:60

Requirement for writing, § 1:57, § 8:5

Signature by defendant or its agent, § 1:57

Termination by subsequent agreement, § 8:5

Timing for creation of written document, § 1:57

Unenforceability, not nullity, § 1:57 Variation, § 1:63

WRONGFUL TERMINATION

See Termination of contractual performance