Index

ABANDONMENT OF CONTRACT
By contractor
see Performance
By owner
see Owner

ACCELERATION DAMAGES
Generally, **§ 9:23**

ACCEPTANCE
Bonding company, **§ 15:32**
Of defective work or materials, **§ 4:23, § 7:22, § 9:36 to § 9:43, § 15:32**
Of performance, **§ 5:7**

ACCEPTANCE OF OFFER
Acceptance by conduct, **§ 1:41**
Communication of, **§ 1:42**
Conditional, **§ 1:40**
Effect of acceptance, **§ 1:40**
Effect of counter-offer, **§ 1:40**
Electronic communications, **§ 1:44**
Existence of, **§ 1:40**
Form of acceptance, **§ 1:40**
Method of, **§ 1:40 to § 1:42**
Mitigation, in the context of, **§ 9:20**
Necessity for receipt of, **§ 1:42, § 3:2**
Tenders, **§ 1:43, § 3:2**
Unilateral contracts, **§ 1:43**

ADJUDICATION
Generally, **§ 11:34 to § 11:41, § 18:1**
Abuse of process, **§ 18:6**
Adjudicator, challenging selection of, **§ 18:10**
Adjudicator's notifications/directions, **§ 18:15 to § 18:19**
Appointment of, **§ 11:36, § 18:8**
Commencement of, **§ 11:35, § 18:7**
Determination by the adjudicator, **§ 11:37**
Effect of, **§ 11:38 to § 11:40**
enforcement, **§ 11:40**
entitlement to suspend work, **§ 11:39**
obligation to pay, **§ 11:39**
subsequent proceedings, **§ 11:38**
Eligibility for, **§ 18:2**

ADJUDICATION—Cont'd
Enforcement, **§ 18:20**
Fees, **§ 18:11**
Frivolous and vexatious claims, **§ 18:6**
Insolvency considerations, **§ 18:21**
Interim relief, objections regarding, **§ 18:3**
Judicial review, **§ 11:41**
Objections regarding, **§ 18:3**
Parallel proceedings, **§ 18:5**
Pre-selection, prohibition against, **§ 18:9**
Procedure, **§ 18:12 to § 18:14**
Proceeding, **§ 11:36**
Third parties, involvement of, **§ 18:4**
Transition provisions, **§ 16:12**

AGENT AND AGENCY
Generally, **§ 1:18 to § 1:26**
Authority, **§ 1:21**
actual, **§ 1:21**
breach of warranty of, **§ 1:26**
implied, **§ 1:21**
ostensible or apparent, **§ 1:21**
scope of authority, **§ 1:21**
Closely held or controlled companies, **§ 1:24**
Consultant as agent for owner, **§ 13:4**
Contractor, distinguished from, **§ 1:19**
Creation, by consent, **§ 1:19**
Employment, distinguished from, **§ 1:19**
Insurance adjusters, **§ 1:21**
Liability for agent's contract, **§ 1:20**
Nature of agency, **§ 1:18 to § 1:26**
Pre-incorporation contracts, **§ 1:25**
Principal, disclosed and undisclosed, **§ 1:23**
Principal's liability for, **§ 1:20**
Ratification, **§ 1:22**
Subcontractor, distinguished from, **§ 1:19, § 12:8**

AGREEMENT
Collateral
see Collateral agreement or warranty
Termination of contract by, **§ 8:2 to § 8:7**

AGREEMENT—Cont'd
To agree, **§ 1:32**

ALLOWANCES AND CONTINGENCIES, IN LUMP SUM CONTRACT
Generally, **§ 6:3**

AMBIGUITY
Generally, **§ 2:8, § 2:16**

AMENDMENTS TO CONTRACT
See Variations

ANTICIPATORY BREACH OF CONTRACT
See Breach of contract

ARBITRATION
Agreement for
disputes included, **§ 11:13**
interpretation, **§ 11:5, § 11:13**
mandatory submission, necessity for, **§ 11:5**
minimum content, **§ 11:6**
oral domestic arbitration agreements, **§ 11:3**
separate from or part of commercial agreement, **§ 11:4**
written international commercial arbitration agreements
requirement for, **§ 11:3**
Arbitral tribunal
appointment of, **§ 11:11**
challenge to, **§ 11:12**
composition of, **§ 11:11**
jurisdiction, **§ 11:13**
to determine own jurisdiction, **§ 11:13**
Award
appeal of domestic award, **§ 11:18**
time for, **§ 11:25**
declaration of invalidity, **§ 11:26**
enforcement of, **§ 11:28**
Mareva injunction, **§ 11:28**
final, **§ 11:16**
review and setting aside, **§ 11:19 to § 11:24**
grounds, **§ 11:19 to § 11:24**
limitation issues, **§ 11:27**
time for, **§ 11:25**
Challenge to member of tribunal, **§ 11:12**
Commencement of arbitration, **§ 11:10**

ARBITRATION—Cont'd
Competence-competence, **§ 11:13**
Confidentiality, **§ 11:8**
Domestic arbitration statutes, **§ 11:2**
Duty to decide submitted issue, **§ 11:21**
Federal commercial arbitration statute, **§ 11:2**
Independent and impartial, duty to be, **§ 11:12, § 11:23**
Interim court and arbitration proceedings, **§ 11:15**
whether effective against third parties, **§ 11:15**
International commercial arbitration
requirement for agreement, **§ 11:7**
statutes, **§ 11:2**
Limitation period and issues, **§ 11:10, § 11:27**
Nature of, **§ 11:1**
Procedural fairness, duty of, **§ 11:22**
Reasons, duty to give, **§ 11:20**
Remit back to the arbitral tribunal, court's power, **§ 11:24**
Requirement of prior mediation or negotiation, **§ 11:10**
Revocation of arbitration agreement, **§ 11:9**
Stay of arbitral or court proceedings, **§ 11:14**
construction lien claim, **§ 11:14**
impact on limitation issues, **§ 11:14**
third parties, **§ 11:14**
Termination of arbitral proceedings, **§ 11:16**
Two regimes, domestic and international, **§ 11:2**
UNCITRAL, **§ 11:2**
Uniform Arbitration Act, **§ 11:2**
Uniform International Commercial Arbitration Act, **§ 11:2**
Uniform Law Conference of Canada, **§ 11:2**
Valuation, distinguished from, **§ 11:6**

ARCHITECT
See Consultant
Whether lien for architectural services, **§ 16:18, § 16:41**

ASSIGNMENT
Consent to assignment, **§ 4:21**
Distinguished from subcontract, **§ 12:2**

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**
obligation to mitigate, **§ 15:17**
obligation to prove loss, **§ 15:17**

BONDS—Cont'd
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**

BREACH OF CONTRACT
Generally, **§ 7:1 to § 7:25**
Anticipatory breach, **§ 8:16, § 9:14 to § 9:21**

BREACH OF CONTRACT—Cont'd
By contractor, **§ 7:16 to § 7:25**
By owner, **§ 7:6 to § 7:15**
Compliance with terms of tender, **§ 7:7**
Consultant, owner's interference with its authority, **§ 7:15**
Defective work, **§ 7:19 to § 7:23**
Delay
see Delay
Encroachment on neighbouring lands, **§ 7:25**
Failure to observe laws, regulations, **§ 7:7, § 7:21**
Failure to pay subcontractors and suppliers, **§ 7:25**
Insurance, failure to obtain, **§ 7:15**
Interference by owner, **§ 7:10**
Mitigation, **§ 9:14 to § 9:21**
general, **§ 9:14**
impecuniosity, **§ 9:16**
notice, cure and dispute resolution clauses, **§ 9:18**
see also Notice of breach, cure, delay or default
offer, obligation to accept, **§ 9:20**
other situations, **§ 9:21**
repairs, **§ 9:19**
repudiation, duty to accept, **§ 9:15**
tenders, **§ 9:17**
Non-completion, **§ 7:18**
Notice of breach, cure or default
see Notice of breach, cure, delay or default
in context of mitigation, **§ 9:18**
Payment, failure to pay on time, **§ 6:9, § 7:8**
Remedies for, **§ 9:1 et seq.**
Repudiation, breach amounting to, **§ 8:16**
see Repudiation
duty to accept, **§ 9:15**
Site availability, **§ 7:9**
Tendering, **§ 7:7, § 7:17**
Termination of contract, amounting to breach, **§ 7:14**
Waiver of, **§ 1:69, § 4:7, § 4:25, § 4:26**
What is, **§ 7:1, § 7:6 to § 7:25**

BUILDER'S LIEN
See Construction lien

BUILDING CODE
Compliance with, **§ 7:21**

BUILDING CONTRACT
Meaning of, **§ 1:1 et seq.**

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE (CCDC)
Standard forms
see Appendix D

CAPACITY TO CONTRACT
Generally, **§ 1:8 to § 1:17**

CERTAINTY
Impact of arbitration clause, scale or measure, **§ 1:32**
Misrepresentation and mistake, distinguished from, **§ 1:35**
Of subject matter of contract, **§ 1:32**
Oral or written contract, **§ 1:34**

CERTIFICATE
Authority to issue, **§ 6:33 to § 6:37**
existence of authority re extras and changes, **§ 6:34**
scope of authority re extras and changes, **§ 6:34**
Binding, whether, **§ 5:7, § 6:13, § 6:35, § 13:13**
failure to dispute certificate or consultant's decision, **§ 13:13**
Condition precedence, whether, **§ 6:13, § 13:16**
Consultant's role and authority, **§ 13:14**
see Consultants
Detail and form, waiver of, **§ 6:13**
Effect of owner's, consultant's conduct, **§ 6:14, § 13:9**
conduct contrary to the contract, **§ 6:14**
partial and unfair conduct, **§ 6:14**
Effect of progress and final certificates, **§ 6:13**
Extras, **§ 6:13, § 6:14**
Final and binding, whether, **§ 6:13, § 6:14, § 13:13, § 13:17**
Implied certificate of satisfaction with work, **§ 13:15**
Limitation period, impact on, **§ 6:13**
Owner's conduct, re, **§ 6:13, § 13:9**
Progress payments, **§ 6:24**
condition precedent, **§ 6:11 to § 6:14**
form of, **§ 6:13, § 6:14**
Right to, **§ 6:13, § 6:14**

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**

CONTRACTOR—Cont'd
Payment to
see Payment

CONTRA PROFERENTEM
See Interpretation

CONTRIBUTION AND INDEMNITY
See Damages

CONTRIBUTION AND INDEMNITY BETWEEN WRONGDOERS
Generally, **§ 13:8**

CORPORATIONS
See Company

COST PLUS CONTRACT
Cost and fee, defining, **§ 6:5**
Extra or changed work, **§ 6:5**
Maximum price, **§ 6:5**
Nature of, **§ 6:5**
Records of, **§ 6:5**

COSTS
Impact costs, **§ 9:23**
Whether basis for reasonable remuneration, **§ 10:10**

COUNTER-OFFER
Generally, **§ 1:40**

CROWN
Generally, **§ 1:9**
Action against, **§ 1:9**
Federal, **§ 1:9**
Impact of legislative appropriation, **§ 1:9**
Impact of statute law, **§ 1:9**
Liens, **§ 16:22, § 16:25, § 16:30, § 16:33, § 16:40, § 16:60, § 16:68 to § 16:69, § 16:71**
Provincial, **§ 1:9**
Trust fund claims re, **§ 16:69 to § 16:71**

CURE NOTICE
See Notice of breach, cure, delay or default

CUSTOM
Agents, authority of, **§ 1:21**
Interpretation relying on, **§ 2:7, § 2:20**

DAMAGES
Generally, **§ 9:9 to § 9:46**
Basic principles, **§ 9:10**
Breach of contract, **§ 9:9 to § 9:46**

DAMAGES—Cont'd
Causation, **§ 9:11**
Contingencies, **§ 9:13**
Contractor's claims
additional direct costs, **§ 9:45**
depreciation, **§ 9:45**
loss of profit, **§ 9:45**
overhead costs, **§ 9:45**
timing issues, **§ 9:45**
Contribution and indemnity, **§ 9:4, § 13:8**
Delay, **§ 7:11, § 7:24**
Exclusion of right to, **§ 4:25 to § 4:28, § 4:41, § 9:28**
Fraud, **§ 4:9**
Impecuniosity, **§ 9:13**
mitigation, **§ 9:16**
Innocent misrepresentation, **§ 8:10**
Least onerous performance, **§ 9:26**
Limitation of, **§ 9:28**
Liquidated, **§ 4:30, § 9:28**
see Liquidated damages
Measure of, **§ 1:31 to § 1:35, § 9:13**
Mitigation of, **§ 9:14 to § 9:21**
general, **§ 9:14**
impecuniosity, **§ 9:16**
notice, cure and dispute resolution clauses, **§ 9:18**
see also Notice of breach, cure, delay or default
offer, obligation to accept, **§ 9:20**
other situations, **§ 9:21**
repairs, **§ 9:19**
repudiation, duty to accept, **§ 9:15**
tenders, **§ 9:17**
Nominal, **§ 9:24**
Non-performance, **§ 5:5**
Owner's claims
contractor's abandonment or non-completion, **§ 9:37**
contractor's delay, **§ 9:39**
contractor's faulty workmanship, **§ 9:38**
seizing contractor's equipment, **§ 9:41**
see Equipment
Proof of loss, **§ 9:11**
Punitive and aggravated, **§ 9:27**
Quantum meruit in lieu of, in the case of repudiation, **§ 10:12**
Remoteness of, **§ 9:12**

DAMAGES—Cont'd
Ripple, acceleration, productivity, impact claims, **§ 9:23**
Set-off, **§ 9:35**
see Set-Off
Tenders, **§ 9:42**
mitigation, **§ 9:17**
Third party claims, **§ 9:24**
Uncertainty, **§ 9:13**
Unjust enrichment, in lieu of in the case of repudiation, **§ 10:12**
see Unjust enrichment

DEFECTIVE WORK
Breach, defective work by contractor, **§ 7:19 to § 7:23**
Correction and default notices, **§ 4:22, § 7:5**
see Breach of contract; Notice of breach, Notice to cure, Notice of default, Notice of claim for extras, variations, delay events, compensation events, etc.
Delay
see Delay
Design defect, **§ 7:20**
Fitness for use or purpose, **§ 4:48 to § 4:54, § 7:20**
General conditions, **§ 4:22**
Repudiation, **§ 7:22**
Standards, mandatory and non-mandatory, **§ 7:21**
Waiver and acceptance, **§ 7:22**
Warranty re, **§ 7:23**
time limits, **§ 7:23**
whether sole remedy, **§ 7:23**
Workmanship and materials, **§ 4:51**

DELAY
By contractor, **§ 7:24, § 9:39**
By owner, **§ 7:11**
Caused by other party, **§ 7:11, § 7:24**
Clauses, re, **§ 7:13, § 7:24**
Concurrent causes, **§ 7:12**
Exclusion of damages for, **§ 9:28**
Extension of time, **§ 4:30, § 4:35, § 7:5, § 7:13, § 7:24**
Limitation clauses, **§ 4:41**
Liquidated damages
see Liquidated damages

DELAY—Cont'd
Notice re delay claim
see Notice of breach, cure, delay or default
Reasonable time, if time not otherwise specified, **§ 4:42 to § 4:45, § 7:11, § 7:24**
Repudiation, **§ 7:24, § 8:15 to § 8:21**
see Repudiation
Specific remedy, **§ 7:24**

DEPOSIT
Bond, alternative to, **§ 15:1**
Part payment, **§ 6:8**
Place of contract, **§ 1:42**

DIRECTORS
See Company, officers and directors

DRAWINGS
See Plans and drawings

DURESS, UNDUE INFLUENCE AND COERCION
Impact on intention to contract, **§ 1:30**
Rescission for, **§ 8:14**

EJUSDEM GENERIS
See Interpretation

ELECTRONIC COMMUNICATIONS
Time or place of sending or receipt, impact on, **§ 1:44**
Websites, **§ 1:44**
Writing or particular form, impact on, **§ 1:44, § 1:58**

ENCROACHMENT
Generally, **§ 7:24**

ENFORCEABILITY OF CONTRACT
Generally, **§ 1:50 to § 1:70**

ENGINEER
See Consultants
Whether lien for engineering services, **§ 16:18**

ENTIRE AGREEMENT CLAUSES
See also Limitation, exclusion, waiver and entire agreement clauses
Generally, **§ 4:27**

EQUIPMENT
Seizure of contractor's equipment, **§ 9:41, § 12:16**

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**

INTERPRETATION—Cont'd
Entire agreements clause, **§ 2:19**
Evidence of the full contract, **§ 2:22**
Exemption clause, **§ 2:14**
Expressio unius est exclusio alterius, **§ 2:10**
Extrinsic evidence, **§ 2:15 to § 2:22**
for another purpose than interpretation, **§ 2:21**
Inconsistencies, **§ 2:4**
Negotiated provision, interpretation of, **§ 2:12**
Negotiations, use for interpretation, **§ 2:17**
Noscitur a sociis, **§ 2:11**
Numbers and words, **§ 2:4**
Objective intention of the parties, **§ 2:3**
Parties' definitions, **§ 2:3**
Post-contract conduct, **§ 2:18**
Preserving agreement, **§ 2:6**
Printed and written provisions v. standard or pre-printed form, **§ 2:12**
Specific and general references, **§ 2:9**
Specific reference and alternatives, **§ 2:10**
Specific words, **§ 2:2**
Surrounding circumstances, **§ 2:16, § 2:20**
Tautology, presumption against, **§ 2:13**
Technical or trade meaning, **§ 2:6, § 2:7**
Tendency towards strict, **§ 1:69**
Ut res magis valeat quam pereat, **§ 2:6**

INTOXICATED PERSONS
Capacity to contract, **1:11**

INVITATION TO BID
See Tendering, invitation to tender

JOINT LIABILITY, CONTRIBUTION AND INDEMNITY BETWEEN CONTRACTOR AND CONSULTANT
Generally, **§ 13:8**

JOINT VENTURE
Capacity to contract, **§ 1:16, § 16:22**

LAND
Contracts affecting, **§ 1:57, § 1:59**

LEGISLATION
Generally, **§ 16:1**
Contracting out, prohibition of, **§ 16:3**

LEGISLATION—Cont'd
Holdbacks
Generally, **§ 16:59**
Agreements affecting lien claim, **§ 16:66**
Amount and permissible form of, **§ 16:60**
Building contract, impact of holdback provisions on, **§ 16:65**
Holdback charge or lien, **§ 16:68**
Holdback rights, no reduction of, **§ 16:62**
Notice of lien and notice holdback, **§ 16:64**
Payment of, **§ 16:61**
Release, **§ 16:66**
Set-off, **§ 16:66**
Substantial performance, final completion or abandonment, determining fact of, **§ 16:67**
Two holdback periods, **§ 16:63**
Two holdbacks, **§ 16:63**
Waiver, **§ 16:66**
Informational rights, **§ 16:80**
Joint venture may be contractor, **§ 1:16, § 16:22**
Jurisdiction, **§ 16:2**
Liens
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**
Owner's interest in premises, **§ 16:33**

LEGISLATION—Cont'd
Liens—Cont'd
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**

LEGISLATION—Cont'd
Liens—Cont'd
Value of lien—Cont'd
Pyramid payments scheme, impact on lien value of, **§ 16:29**
When lien arises, **§ 16:32**
Other legal rights, **§ 16:4**
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**
28/14/7/7 Payment Schedule, **§ 17:4**
Contractor to subcontractor, **§ 17:5**
Interest on late payments, **§ 17:7**
Late payments, interest on, **§ 17:7**
Subcontractor to subcontractor, **§ 17:6**
Triggering of, **§ 7:3**
Timelines, overview of, **§ 17:2**
Remedies
Generally, **§ 16:5 to § 16:15**
Contractors, statutory rights and remedies of
Generally, **§ 16:5**
Adjudication system, **§ 16:12**
Holdbacks, **§ 16:7**
Informational right, **§ 16:10**
Liens, **§ 16:6**
Prompt payment obligations, **§ 16:11**
Statutory trust, **§ 16:8**
Trustee, appointment of, **§ 16:9**
Owners, statutory rights and remedies of
Common law rights, maintaining, **§ 16:14**
Contractual rights, maintaining, **§ 16:13**
Holdback, set off-off rights against, **§ 16:15**
Owner liability, limited, **§ 16:15**
Set-off rights against holdback, **§ 16:16**
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
Quantities, **§ 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
Generally, **§ 6:1 to § 6:38**
Advance, **§ 6:7 to § 6:23**
Breach or repudiation, **§ 6:9**
Changed, concealed or unknown circumstances, payment re
see Changed, concealed or unknown circumstances and delays
Condition precedent to, **§ 6:11 to § 6:14**
Construction management
see Construction management contract
Consultant's certificates
see Consultants
Cost plus contract
see Cost plus contract
Currency, **§ 6:1 to § 6:6**
Deposit, **§ 6:8**
Extras
see Extras
Final, **§ 6:25**
final certificate and release, **§ 6:25**
lien legislation, **§ 6:25**
Holdback
see Holdback
Interest, **§ 6:10**
Lien statutes
see Construction lien
Lump sum
see Lump sum contract
Methods of, **§ 6:1 to § 6:6**
Partial completion, **§ 5:4.70, § 5:6**
Part payment, **§ 6:8**
Payment bond
see Bonds
Payment for extras, changed circumstances and delays, **§ 6:38**
Pay when paid and pay if paid clauses, **§ 6:12, § 15:41**
lien legislation, impact of, **§ 6:11 to § 6:14**
Periodic
contractor's entitlement to, **§ 5:4.70**
time and conditions for, **§ 6:26**
Progress payments, **§ 5:4.70, § 6:7 to § 6:24**
implied terms re, **§ 6:24**
lien legislation, **§ 6:24, § 16:31, § 16:76**
see Construction lien
right to, **§ 5:4.70, § 5:6, § 6:7 to § 6:24**

PAYMENT—Cont'd
Progress payments, **§ 5:4.70, § 6:7 to § 6:24**—Cont'd
separate quantities, **§ 6:24**
separate stages, **§ 6:24**
set-off or counterclaim for remedial or completion costs, **§ 6:24**
see Set-off
value of work, separate quantities, **§ 6:24**
Prompt payment, **§ 6:15 to § 6:23, § 17:1 to § 17:8**
alternative financial and procurement arrangements and special purposes entities, **§ 6:22**
contractor and subcontractor level, **§ 6:17 to § 6:19**
other considerations, **§ 6:23**
owner and contractor level, **§ 6:16**
subcontractor and sub-subcontractor level, **§ 6:20**
tracking the payment and notices of non-payment, **§ 6:21**
Refusal of, **§ 6:7 to § 6:23, § 7:1**
Right to, **§ 5:1, § 6:7 to § 6:24, § 13:1**
withhold, **§ 5:1, § 6:7 to § 6:23, § 7:2**
Set-off
see Set-off
Subcontractor, claim from owner, **§ 12:16**
Substantial performance, payment upon
see Construction lien
Time of, **§ 6:7**
waiver of, **§ 6:7**
Underpayment, **§ 6:7, § 7:8**
Unit price contract
see Unit price contract
Whether contract is lump sum, cost plus, unit price, **§ 6:2**

PAY-WHEN-PAID OR PAY-IF-PAID CLAUSES
See Payment

PENALTY CLAUSES
See Liquidated damages

PERCENTAGE OF COMPLETION
Progress payments based on, **§ 5:4.70, § 5:5 to § 5:7**
see Payment

PERFORMANCE
Generally, **§ 5:1 to § 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**

QUANTITIES
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**

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, **APP A § A:1 to APP A § A:11**
Inquiries as to, **§ 1:1 et seq., APP D**
Subcontract, **APP D3**
Unit price contract, **APP A § 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 SUBCONTRACTORS—Cont'd
Nominated subcontractor, **§ 12:7**
Not party to main contract, **§ 1:3 to § 1:27, § 12:8, § 12:15**
Owner, relationship with, **§ 12:15, § 12:16**
Payment of
claim against owner, **§ 12:16**
condition precedent as to, **§ 6:11 to § 6:14**
deposit or part payment, **§ 6:8**
guarantee distinguished from indemnity or direct agreement to pay, **§ 12:16**
pay when paid clause, **§ 6:12, § 12:8**
Prime contractor, relationship to, **§ 12:8 to § 12:14**
Provision for subcontracts in main contract, **§ 12:7**
Rights and obligations of, in relation to owner, **§ 12:15**
Rights and obligations of, in relation to prime contractor, **§ 12:8**
Right to subcontract, **§ 12:6**
Site, sharing, **§ 7:10**
Tenders, **§ 3:15, § 12:11**
Existence of Contract A, **§ 12:13**
Reasonable excuse not to enter into subcontract, **§ 12:14**
Termination or variation of prime contract, **§ 12:10**
Tort and insurance consequences of, **§ 12:3 to § 12:5**

SUBJECT MATTER
Agreement or failure to agree on, **§ 1:31 to § 1:35**

SUBJECT TO CONTRACT
Impact on intention to contract, **§ 1:29**

SUB-SUBCONTRACTOR
Generally, **§ 12:17**

SUPERVISION
Consultant, authority of, **§ 13:11**
Consultant's contract with owner re, **§ 13:3**

SUPPLIER
See Construction lien

TAX
Generally, **§ 4:45**

TENDERING
Bid depository
nature of, **§ 3:16**
relationship to tender documents, **§ 3:16**
Bid-rigging, **§ 3:18**
Bid-shopping, implied term against, **§ 3:5**
Compliance
compliant bid, whether duty to accept only, **§ 3:7**
elements of, **§ 3:2**
necessity for, **§ 3:3**
Contract A
rights not arising under, **§ 3:11**
terms of, **§ 3:4**
Contract B
negotiation of, whether permissible, **§ 3:14**
terms of, **§ 3:14**
when arising, **§ 3:14**
Examine behind the bids
consequences of doing so, **§ 3:7, § 3:11**
whether there is a duty to, **§ 3:7, § 3:11**
Fair treatment, duty of, **§ 3:3 to § 3:5**
Implied terms
accept compliant bid, whether there is a duty to, **§ 3:7, § 3:9**
accept the lowest tender, whether there is a duty to, **§ 3:8**
bid-shopping, whether there is a duty not to, **§ 3:5**
examining behind bid
see examine behind the bids
fair treatment, duty of, **§ 3:3 to § 3:5**
Invitation to tender, wording of, **§ 3:4**
distinction from request for proposal, **§ 3:2, § 3:3, § 3:12**
Irregularity and formality, entitlement of owner to waive, **§ 3:9**
Irrevocable, **§ 3:2**
Late tenders, **§ 3:5**
Legal nature of, **§ 3:2, § 3:3**
Lowest tender, whether there is a duty to accept, **§ 3:8**
Misrepresentation and fraud, **§ 3:11**
Mistake in tender, **§ 3:13**
Offer and acceptance in, **§ 3:2, § 3:3**
Pre-qualified bidders, **§ 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**
faiure 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**

UNJUST 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