

# **NEW ZEALAND INSTITUTE OF QUANTITY SURVEYORS**

## **CONDITIONS OF ENGAGEMENT**

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## A. INTRODUCTION

This introduction does not form part of the agreement made under these conditions.

### USE OF THIS DOCUMENT

This document shall be for the use of members of the New Zealand Institute of Quantity Surveyors Inc. Where the Quantity Surveyor is a limited liability company its directors shall be members of the New Zealand Institute of Quantity Surveyors Inc. Where the Quantity Surveyor is a partnership, the partners shall be members of the New Zealand Institute of Quantity Surveyors Inc.

### DEFINITION OF PURPOSE

The scope and nature of the service to be provided by the Quantity Surveyor will vary with the particular project in order to meet the Employer's requirements. To facilitate good working relationships and to avoid misunderstandings a clear agreement is essential. Such an agreement needs to set out the responsibilities of the Quantity Surveyor, the Employer, and others, as well as the extent of the service to be provided and conditions of payment for that service.

This document is designed to establish an agreement between the Employer and the Quantity Surveyor for a range of project types and sizes. For each project it is necessary to agree and record the scope of services, the schedule of fees, and expenses.

**Section B: Scope of Service** - This lists the scope of service normally provided by the Quantity Surveyor. To record the agreement between the Quantity Surveyor and the Employer the schedule must be completed and amplified with additional documentation when that is appropriate. Where the service is not listed in this section then that service should be fully described in the Agreement.

**Section C: Conditions of Engagement** - This sets out the responsibilities of the parties - Employer and Quantity Surveyor - as well as general conditions. The latter include such matters as copyright, liability, and mechanisms for the resolution of disputes.

Where the Quantity Surveyor is to use sub consultants these shall be listed in the Agreement.

**Section D: Fees and Reimbursable Expenses** - This sets out conditions and methods of payment for services, including travelling expenses and general disbursements.

**Section E: Agreement Format** - This allows for the signing of the Agreement, and provides a basis for the definition of the parties etc., using a regular format.

## **B. SCOPE OF SERVICES**

The service provided by a quantity surveyor ranges from the preliminary assessment of a project, through the cost planning and provision of cost information to facilitate adjustment of design concepts, the preparation of estimates for the preferred design solution, the evaluation of tenders or submitted offers, the financial management and control of the contract, to negotiation of the contract financial completion.

Special circumstances surrounding the project may involve the quantity surveyor in a range of services other than quantity surveying. If possible, these other services should be identified and included at the outset of the commission, or otherwise as they become necessary during the progress of the commission. Arrangements should be agreed concerning the quantity surveyor's involvement and the conditions of engagement appropriate to any such extension of the commission.

Specialist advice in fields other than quantity surveying, such as engineering, architecture, landscape design, and town planning, may be necessary for the project. These may involve the quantity surveyor in cooperating with or coordinating other consultants during the project.

The scope of services to be provided directly by the quantity surveyor and/or in conjunction with sub consultants must be agreed and clearly documented so that there is full understanding by both parties.

The services listed on the following pages (3 to 6 incl.) may be grouped into four categories -

- \* Project assessment and cost management
- \* Pre contract documentation and contract offer evaluation
- \* Contract cost management, monitoring and finalisation
- \* Other services

### **B.1 PROJECT ASSESSMENT AND COST MANAGEMENT**

#### **1.01 Preliminary Services**

- .01 Assist in establishing the building/structure envelope by means of comparative area, shape, and height studies.
- .02 Prepare a preliminary budget estimate of construction cost based on concept drawings and other briefing materials.
- .03 Advise on building economics and/or market conditions.
- .04 Provide preliminary contract advice and guidance.

## 1.02 Cost Planning Services

- .01 Undertake cost studies of various elements, systems, functions, and configurations of the works, such as foundation and structural systems, facade treatment, roof forms, etc., to assist the designers in establishing the initial sketch design.
- .02 Prepare a detailed cost estimate of the proposed works in elemental format, based upon approximate quantities measured from sketch drawings prepared by the Consulting Architect and Structural/Services Engineers.
- .03 Prepare recommendations on savings if the detailed estimate falls outside the budget, and subsequently adjust the estimate on the basis of design modifications introduced as a means of adhering to budgetary restraints.
- .04 Prepare cost projections to anticipated commencement and completion dates in order to establish at an early date the likely financial commitment at those points.
- .05 Prepare a detailed cost plan incorporating brief descriptions of the various constituent elements, elemental costs, an outline program, and provisions for construction cost inflation.
- .06 Prepare cash flow forecasts.
- .07 Research and advise on the economic effect of proposed modifications in design, including the use of alternative finishes and methods of construction.
- .08 Prepare cost checks and report on same during the design development and documentation period to maintain budgetary control.
- .09 Prepare a detailed estimate or cost check, whichever is the more appropriate, upon completion of design development, including (if necessary) the preparation of a revised elemental cost plan to facilitate cost monitoring and control during the documentation phase.
- .10 Coordinate specialist consultants estimates.

## **B.2 PRE CONTRACT DOCUMENTATION AND CONTRACT OFFER EVALUATION**

- 2.01** Prepare schedules/bills of quantities for the trade sections described in the attached appendix "C" or where none stated, for all trade sections.

The schedule/bill of quantities shall be measured generally in accordance with the New Zealand Standard NZS 4202 "Method of Measurement of Building Work" unless otherwise described in the agreement.

- 2.02** Prepare schedules/bills of provisional quantities and schedules/bills of remeasured quantities.

- 2.03** Prepare specified schedules/bills of quantities.

.01 By integrating draft specification clauses and schedules provided by the consulting architect and/or engineer.

.02 By binding in specification sections and schedules provided by the consulting architect and/or engineer.

- 2.04** Prepare trade package schedules/bills of quantities.

- 2.05** Price schedules/bills of quantities.

- 2.06** Evaluate tendered or submitted offers and prepare a report with recommendations including checking the successful tenderer/offeror's priced schedule of quantities.

## **B.3 CONTRACT COST MANAGEMENT, MONITORING AND FINALISATION**

- 3.01** Measure, price, and negotiate costs of variations.

- 3.02** Adjust monetary allowances and provisional quantities.

- 3.03** Assess and value work in progress and issue recommendations for interim payments on a monthly basis or other agreed period.

- 3.04** Price and negotiate the value of remeasured quantities.

- 3.05** Prepare interim financial statements.

- 3.06** Prepare construction cash flow forecasts.

- 3.07** Evaluate contractual claims.

- 3.08** Prepare and negotiate final account.

- 3.09** Provide technical cost audit services.

## **B.4 OTHER SERVICES**

- 4.01** Prepare replacement cost estimate.
- 4.02** Prepare limit of cost estimate/cost audit.
- 4.03** Prepare cost to complete estimate.
- 4.04** Prepare schedules of tax depreciable items.
- 4.05** Prepare design/build evaluation.
- 4.06** Prepare valuations for insurance purposes.
- 4.07** Prepare maintenance schedules/life cycle costings.
- 4.08** Assist with litigation or arbitration processes.
- 4.09** Other services of a unique or unusual nature shall be fully described and set out in the agreement.

Where these services involve such activities as project management or programming then the criteria normally expected in performance and professionalism of others in these fields shall be provided by the quantity surveyor.

- 4.10** Where the quantity surveyor shall second staff for use by the employer, the employer shall become responsible for the professional quality of the seconded staff's work. The employer shall provide appropriate accommodation and facilities for their use.

## **C. CONDITIONS OF ENGAGEMENT**

### **C.1 NZIQS ETHICS**

The quantity surveyor shall be bound by the New Zealand Institute of Quantity Surveyors Inc. "Code of Practice and Professional Conduct".

### **C.2 DOCUMENTATION**

Documentation in all forms necessary shall be provided to the quantity surveyor free of charge to enable the quantity surveyor to undertake the commission. This is to include full tender documentation.

### **C.3 COPYRIGHT**

The copyright of all estimates, schedules, programmes, reports or other documents of whatever kind, shall remain the property of the quantity surveyor and no document produced by the quantity surveyor for the purposes of the work commissioned shall be used by the employer or any person through whom the employer is acting for any purpose not connected with the work commissioned. Further, the employer shall not provide any such document to any third party for use in any prospectus, sales or promotional material related to the work commissioned, without the express written consent of the quantity surveyor, which consent shall not be unreasonably withheld.

Where the employer elects to use any document (such as described above) for another project, the written consent of the quantity surveyor shall be obtained and an additional fee shall be negotiated.

Control of the use of all advice, oral or written, given by the quantity surveyor shall rest with the quantity surveyor, and further use or misuse of such advice without the quantity surveyor's knowledge and consent shall cancel the quantity surveyor's liability to indemnify anyone affected by such further use.

### **C.4 OWNERSHIP OF DOCUMENTATION**

The schedule/bill of quantities and other documents provided by the quantity surveyor shall remain the property of the quantity surveyor whether the work for which they were prepared is executed or not. The number of copies of documents to be provided shall be by agreement with the employer.

The employer shall retain one copy of the documents as a record, or return such set to the quantity surveyor.

### **C.5 PROTRACTED OR DELAYED WORK**

Where a commission is extended in time due to circumstances beyond the quantity surveyor's control, including but not limited to protracted or delayed work, an additional fee shall be negotiated. The additional fee shall reflect the additional administration and recommissioning costs.

### **C.6 REPLANNED WORK**

Where a commission is undertaken on a percentage fee and the quantity surveyor is required to undertake additional work as a result of project replanning, an additional fee shall be negotiated. The additional fee shall reflect both the additional work involved in any changes, and the changed scope of the project.

## **C.7 DISPUTE BETWEEN QUANTITY SURVEYOR AND EMPLOYER**

Any difference or dispute between the quantity surveyor and employer shall be referred to mediation and if the difference or dispute is not resolved it shall be referred to arbitration in accordance with the following, New Zealand law shall prevail.

### **Mediation**

Any difference or dispute between the quantity surveyor and the employer arising out of the agreement made under these conditions of engagement may be referred for settlement by mediation by the service of a notice in writing to the other party.

A mediator mutually agreed upon by the quantity surveyor and the employer shall be appointed, or, failing agreement within twenty working days of the initial service of notice by either party, the nominee of the President of the New Zealand Institute of Quantity Surveyors Inc. Such mediation shall be based upon a joint written statement setting out the matters in dispute.

Acceptance in writing by both parties shall be deemed to be the full and final settlement. The costs of any mediation proceedings shall be borne as the mediator may direct.

### **Arbitration**

If agreement is not reached by mediation, then the dispute shall be referred to arbitration in accordance with the following:

Any dispute or difference which may arise between the parties concerning the interpretation of the agreement made under these conditions or relating to any matter arising under the agreement made under these conditions which cannot be settled between the parties by mediation shall be determined by arbitration in accordance with the provisions of the New Zealand Arbitration Act 1996 with Amendments.

The award in the arbitration shall be final and binding on both parties and the costs of any arbitration proceedings shall be borne as the arbitrator may direct.

## **C.8 TERMINATION OF CONTRACT**

Either party may terminate the agreement made under these conditions on the expiration of twenty working days notice given in writing. Upon termination the employer shall pay to the quantity surveyor all amounts due and payable along with the incidental costs of termination should such termination be beyond the control of the quantity surveyor.

## **C.9 ASSIGNMENT**

Neither the employer nor the quantity surveyor may assign the agreement made under these conditions without the prior written consent of the other. Notwithstanding, the consent to such assignment may not be unreasonably withheld.

## **C.10 PROFESSIONAL LIABILITY & INSURANCE**

The quantity surveyor agrees to arrange and keep in force professional indemnity insurance to the value set out in the agreement for protection against loss caused by the negligence of the quantity surveyor. In any case the amount of damages payable shall be limited to the amount of loss and damage suffered as a direct result of such negligence, but in any instance whether under the law of contract, tort, or otherwise, is limited to the value agreed above, or should no such value be set, the amount of professional indemnity insurance carried by the quantity surveyor for the currency of the subject project.

The quantity surveyor shall have no responsibility for or liability for costs, loss, or damage of whatever nature arising from:

- (i) Any errors in or omissions from data, documents, drawings and designs, information or specifications, reports and estimates not prepared by the quantity surveyor, the quantity surveyor's employees or other personnel under the direct control of the quantity surveyor.
- (ii) Any act or omission or lack of performance or negligent act or fraudulent act or omission by the employer or separate consultant, contractor or supplier to the employer, or any employee or agent of the employer, separate consultant, or other third party.

## **C.11 QUALITY ASSURANCE**

Where quality assurance is required within the agreed scope of services, it shall be in general accordance with the New Zealand Standard NZS 9001 "Quality Systems for Design/Development, Production, Installation, and Servicing".

## **C.12 ACCOUNTS**

The quantity surveyor shall be entitled to monthly progress claims for fees commensurate with the service provided unless payment is on a milestone basis.

The quantity surveyor shall be entitled to interest at the quantity surveyor's overdraft rate on all outstanding fees not paid within one calendar month of the rendering of the account.

## **C.13 GOODS AND SERVICES TAX**

All monetary allowances, fees, and other charges contained within the agreement made under these conditions are (in accordance with trade practice) exclusive of Goods and Services Tax. Where the quantity surveyor is registered under the Goods and Services Tax Act 1985 the tax shall be added to such monetary allowances, fees, and other charges.

## **C.14 SUBCONSULTANTS**

Subconsultants are consultants appointed and paid directly by the quantity surveyor. The quantity surveyor shall be responsible to the employer for the services of the subconsultants and for incorporating their fees and charges within the total fee agreed between the employer and the quantity surveyor. The conditions of engagement and employment of a subconsultant shall be between the quantity surveyor and the subconsultant.

Unless specifically agreed between the quantity surveyor and the employer, the conditions of engagement of the subconsultant shall not vary the basis of the conditions of engagement of the quantity surveyor.

If any such variation is agreed it shall be fully described and recorded in the agreement made.

## **D. FEES**

### **D.1 PERCENTAGE FEE**

#### **1.01 Definition of value to apply**

The fee shall be based on the final cost of the project which shall include all margins and the value of employer supplied items and/or separate work which would be normally part of the project.

Where the quantity surveyor is engaged only for precontract services the fee shall be based on the lowest bona fide tender (or if not available based on the 100% estimate) including all monetary sums which form part of the project, margins, and the value of employer supplied items and/or separate work, which would be normally part of the project.

#### **1.02 Method of payment**

.01 Periodic - as set out in section C.12 - fees shall be claimed and payments made on a monthly basis unless otherwise agreed.

.02 Milestone - if it is possible to identify clear milestones within a project (such as, completion of preliminary design, issue of tender documents, commencement of contract, issue of progress payment valuations, completions, etc.) - payment may be claimed and made in instalments as the milestones are achieved.

The percentage or other division of the overall fee should be agreed and recorded in the agreement made.

.03 Partial - payments may be claimed and made on the basis of an arbitrary schedule, usually time related, to smooth the cashflow for both parties. This may not have any relationship to the progress of the project but is simple and easily understood.

### **D.2 LUMP SUM FEE**

#### **2.01 Definition of value to apply**

The fee shall be the amount stated in the agreement made.

#### **2.02 Method of payment.**

The method of payment shall be as agreed but will generally fall under one of the methods set out in 1.02 above.

### **D.3 TIME CHARGE**

Where charges are made on a time basis, the rates shall be as set out in the agreement made, subject to adjustment by fluctuations in the Consumer Price Index on a half yearly basis or by mutual agreement.

#### **D.4 DISBURSEMENTS**

Unless specifically incorporated in a lump sum or other charge, all expenses actually and properly incurred in connection with the commission shall be reimbursed as an additional charge.

Expenses shall include but shall not be limited to:

(i) Travelling expenses relating directly to the project as:

Fares required by the means of transport selected by the quantity surveyor as agreed with the employer.

Expenses incurred in travel by private car at the rate per kilometre published by the Automobile Association from time to time as noted in the agreement.

Time allowance where the engagement is on a percentage basis for time spent in travelling in connection with the project at the rate set out in the agreement.

Daily expenses at the actual cost of accommodation, meals, and reasonable out of pocket expenses.

(ii) Communication expenses relating directly to the project as:

The cost of telephone and facsimile toll calls and the transmission of documents outside the metropolitan area of the quantity surveyor by post, courier or air freight as agreed with the employer.

(iii) Specialised professional advice as:

Any legal or other professional charges which the quantity surveyor may incur in obtaining specialised advice or particulars on the instructions of the employer.

(iv) Credit checks as:

The cost of obtaining credit checks on prospective contracting participants.

(v) Miscellaneous as:

Any other expenses the incurring of which has been agreed by the employer.

#### **D.5 RECORDS**

Records of services on a time charge basis and of reimburseable expenses shall be properly accounted for by the quantity surveyor. These shall be available for inspection and audit by the employer or an authorised representative at a mutually convenient time.

## E. AGREEMENT FORMAT

### AGREEMENT FOR THE PROVISION OF CONSTRUCTION COST MANAGEMENT AND QUANTITY SURVEYING SERVICES

**Agreed** this ..... day of .....

**Between** .....

of .....

(hereinafter referred to as "the Employer")

**And** .....

of .....

(hereinafter referred to as "the Quantity Surveyor")

**Whereas** the Employer commissions and the Quantity Surveyor accepts the commission to provide to the Employer the services described in the agreement in respect of the following:

.....  
.....  
.....

(hereinafter referred to as "the Work")

**Now it is hereby agreed:**

- E.1** The Quantity Surveyor shall provide in relation to the Work the services stated in appendix "A" attached hereto and the Employer shall pay the Quantity Surveyor for such services the fees stated in appendix "B" in the manner set out in sections C and D of the NZIQS Conditions of Engagement attached.
- E.2** The Quantity Surveyor shall comply with all obligations set out in the NZIQS Conditions of Engagement attached and shall exercise reasonable skill and care in the performance of the duties agreed.
- E.3** Any notice required under or in connection with this agreement may be given in writing addressed to the other party at the address stated in the recital to this agreement or, in the case of a company, its registered office for the time being or that party's last known address, and any such notice given by letter shall be deemed to have been given at the expiration of forty-eight hours after the letter containing the same is posted.
- E.4** In this agreement the term "day" shall mean calendar day unless specifically stated otherwise.

**E.5** The following conditions regarding facilities shall apply to this agreement:

**5.01** The Quantity Surveyor shall provide for its own use and purposes and at its own cost any on and off site computer hardware and software facilities and operators which it may require on the execution of its obligations under this agreement.

**5.02** Any computer facility of any kind required by the Employer for the purposes of the Work shall be provided by the Employer at its own cost.

**5.03** The Employer shall provide for reasonable heated and ventilated site offices furnished with appropriate desks, shelving, plan benches and cabinets, seating, telephone, photocopying and facsimile facilities for the period that full time attendance at the site is required.

**E.6** The following documents shall form the agreement:

- \* Agreement Form
- \* NZIQS Conditions of Engagement
- \* Appendix "A" Scope of Services Summary
- \* Appendix "B" Fees and Expenses Summary
- \* Appendix "C" Trade Sections Measurement Summary
- \* Additional Documents as:

# .....

# .....

**E.7** Professional Indemnity Insurance (clause C.10) \$.....

**As Witness** the hands of the parties the day and the year first above written.

**Signed by:** .....

on behalf of .....

.....Employer

in the presence of

.....

**Signed by:** .....

on behalf of .....

.....Quantity Surveyor

in the presence of

.....

## Appendix A

### Scope of Services Summary

Initialed for acceptance ----- Employer \* Quantity Surveyor

#### **B.1.01 Preliminary Services**

- 1.01.01 Establish envelope
- 1.01.02 Preliminary budget estimate
- 1.01.03 Economic advice
- 1.01.04 Preliminary contract advice

#### **B.1.02 Cost Planning Services**

- 1.02.01 Cost studies
- 1.02.02 Elemental estimate
- 1.02.03 Budgetary restraint recommendations
- 1.02.04 Cost projections
- 1.02.05 Cost plan
- 1.02.06 Cashflow forecasts
- 1.02.07 Design modification advice
- 1.02.08 Budgetary cost checks
- 1.02.09 Final project estimate
- 1.02.10 Coordinate specialist estimates

#### **B.2 Documentation and Evaluation**

- 2.01 Schedules/bills of quantities
- 2.02 Provisional/remeasured quantities
- 2.03 Specified schedules/bills of quantities
- 2.04 Trade package schedules/bills of quantities
- 2.05 Price schedules/bills of quantities
- 2.06 Evaluate tenders/offers

**B.3 Cost management/monitoring/etc.**

- 3.01 Variations
- 3.02 Adjust sums
- 3.03 Progress valuations
- 3.04 Price/negotiate remeasures
- 3.05 Financial statements
- 3.06 Cashflow forecasts
- 3.07 Evaluate claims
- 3.08 Final account
- 3.09 Cost audit services

**B.4 Other Services**

- 4.01 Replacement cost estimate
- 4.02 Limit of cost/cost audit
- 4.03 Cost to complete
- 4.04 Tax depreciation schedules
- 4.05 Design build evaluation
- 4.06 Insurance valuations
- 4.07 Maintenance schedules/life cycle costs
- 4.08 Litigation/arbitration assistance
- 4.09 Other service as:
  - # .....
  - # .....
  - # .....
- 4.10 Secondment of staff

**E.8**

**Appendix B**

**Fees and Expenses Summary**

Initialed for acceptance ----- Employer \* Quantity Surveyor  
~~~~~|~~~~~

**D.1 Percentage fee**

- 1.01 For services listed in Appendix A  
.....%
- 1.02 Method of payment
  - 1.02.01 Periodic (monthly/.....)
  - 1.02.02 Milestone - .....% @ .....
    - .....% @ .....
    - .....% @ .....
    - .....% @ .....
    - .....% @ .....
    - .....% @ .....
    - .....% @ .....
    - .....% @ .....
  - 1.02.03 Partial - (describe).....  
.....  
.....

**D.2 Lump sum fee**

- 2.01 For services listed in Appendix A  
\$.....
- 2.02 Method of payment  
As set out in clauses 1.02.01 to 03 above.  
Or other .....  
.....

**D.3 Time charge**

Applicable hourly rates:

- \$..... Partner/Director
- \$..... Associate/Associate Director
- \$..... Senior Quantity Surveyor
- \$..... Assistant Quantity Surveyor
- \$..... Junior Quantity Surveyor
- \$..... Technical Assistant

**D.4 Disbursements**

Disbursements, outgoings and expenses as set out in clause D.4 shall be added to the above fees.

**C.12 Interest on overdue accounts**

As set out in clause C.12, interest at the Quantity Surveyor's short term unsecured overdraft rate applicable at the date of account issue.

**This page initialled for acceptance : .....(Employer)**

.....(Quantity Surveyor)

**E.9**

**Appendix C**

**Trades Measurement Summary**

Initialled for acceptance ----- Employer \* Quantity Surveyor  
~~~~~|~~~~~

The following trade sections shall be measured and included with Schedules/bills of Quantities provided for this project:

- 01 Introduction, General Rules, and Recommendations
- 02 Preliminaries
- 03 Demolition
- 04 Groundworks:
  - 04.1 Excavation
  - 04.2 Filling and hardcore
  - 04.3 Paper and plastic membranes
  - 04.4 Underpinning
  - 04.5 Rock stabilisation
- 05 Piling:
  - 05.1 Driven piling
  - 05.2 Cast in situ piling
- 06 Concrete:
  - 06.1 In situ concrete
  - 06.2 Formwork
  - 06.3 Permanent metal formwork system
  - 06.4 Reinforcement
  - 06.5 Prestressing
  - 06.6 Slip formed construction
  - 06.7 Precast concrete
  - 06.8 Tanking
- 07 Masonry
- 08 Stonework:
  - 08.1 Natural stonework
  - 08.2 Artificial stone, terracotta, and similar work
- 09 Structural steel
- 10 Metalwork
- 11 Woodwork
- 12 Glazing
- 13 Hardware
- 14 Access floors
- 15 Partitions

Initialled for acceptance ----- Employer \* Quantity Surveyor  
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- 16 Roofing
- 17 Suspended ceilings
- 18 Windows
- 19 Doors
- 20 Finishes:
  - 20.1 Insitu applied finishes
  - 20.2 Metal lathing
  - 20.3 Plasterboard, fibrous plaster, acoustic tiles, and similar
  - 20.4 Tile, slab, block or sheet finishes, pavings, and carpet
  - 20.5 Division strips and inserts
- 21 Painting
- 22 Furniture
- 23 Hydraulics
- 24 Drainage
- 25 Electrical installations
- 26 Mechanical installations
- 27 Fire protection installations
- 28 Vertical and horizontal transportation installations
- 29 Exterior elements:
  - 29.1 Landscaping
  - 29.2 Roadworks
- 30 Artworks etc.
- 31 Specialist works as:
  - (a) .....
  - (b) .....
  - (c) .....