# Terminate the Contract

Mentioned in Clause 17.4

## User guidance

Instructions in the sample text below have been highlighted in yellow. If highlighting is not visible, go to Tools/ Options then click on the View tab, tick the Highlight check box and click the OK button.

MW21 Clause Commentary on Clause 17.4 is available on the ProcurePoint website. Please view the [Index of construction documents](https://www.procurepoint.nsw.gov.au/index-construction-documents) to locate all documents referenced throughout this text.

## Sample text for letter to the Contractor

Below are three options which may apply:

* Use Option 1 when the Contract is being terminated because the Contractor failed to respond satisfactorily to a notice under Clause 17.1.
* Use Option 2 when an administrator, receiver or liquidator has been appointed.
* Use Option 3 when the Contractor has advised that it is unable to perform its obligations under the Contract.

## Option 1 – if the Contractor failed to respond satisfactorily to a notice under Clause 17.1.

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| » insert the dateThe Contractor,» insert the name of the ContractorABN » insert the Contractor ‘s ABN» insert the Contractor ‘s addressAttention: » insert the name of the Contractor’s nominated representative**» insert the Contract nameContract No. » insert the Contract No.****Termination of the Contract**On » insert the date of the notice under Clause 17.1 your company, as the Contractor under the above Contract, was notified that it had committed a substantial breach of the Contract. You were requested to respond within 7 days after receiving that notice, in accordance with Clause 17.2 of the General Conditions of Contract.You have not » insert ‘provided a satisfactory written response’ or ‘provided proposals to satisfactorily remedy the breach’ within the required time, that is by » insert the date which was 7 days after the Principal’s notice was delivered.The Principal is therefore terminating the Contract, in accordance with Clause 17.4 of the General Conditions of Contract, with effect from » insert the date on which the termination is to take effect.You are instructed to attend a meeting on the Site on » insert a date (agreed beforehand if possible) two or three days before the date on which termination takes effect to jointly take an inventory of plant and equipment and agree what will remain to complete the Works and what is to be removed. You must leave the Site, removing the agreed plant and equipment, before » insert the date of termination. Please advise by » insert an appropriate date two or three days before the proposed Site meeting if you will be unable to attend the meeting on the Site.Yours sincerely,» insert the name of the person issuing the notice» insert the person ‘s position title**for the Principal** |

## Option 2 – if an administrator, receiver or liquidator has been appointed.

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| » insert the date» insert Mr/Ms and the name of the Administrator (See Note 2), Administrator» insert the name of the Administrator’s organisation» insert the Administrator’s addressFor » insert the name of the Contractor (Administrator appointed)ACN » insert the Australian Company NumberAttention: » insert the name of the Administrator’s nominated representativeCopy to:The Contractor,» insert the name of the ContractorABN » insert the Contractor ‘s ABN» insert the Contractor ‘s addressAttention: » insert the name of the Contractor’s nominated representative**» insert the Contract nameContract No. » insert the Contract No.**Dear Sir or Madam,» insert the name of the project management firm or agency managing the Contract represents the » insert the name of the Principal as stated in Contract Information item 5, who is the Principal in the above Contract. The Principal understands that » insert the name of the Contractor has been placed under external administration and that » insert the name of the Administrator’s organisation has been appointed as the Administrator.» insert the name of the Contractor was engaged under this Contract to undertake construction works at » insert the address of the Works. The NSW Government MW21 General Conditions of Contract apply to the Contract.Section 17 of the General Conditions of the Contract, *Contractor’s Default and Insolvency*, provides for the Principal to terminate the Contract if the Contractor is wound up or declared insolvent. A copy of Section 17 is attached for your information.There are significant time constraints associated with completion of the work under this Contract, and the Principal intends to exercise the option of terminating the Contract in accordance with Clause 17.4. Unless rescinded beforehand, the termination will take effect from » insert the date on which the termination is to take effect (See Note 3). If you do not consider this action appropriate because » insert the name of the Contractor is no longer under external administration or you are in a position to expeditiously complete the work, please advise by close of business on » insert an appropriate date, not less than 2 days after the date of this letter. If you propose to complete the work under the Contract, please include with your advice details of the technical, material and financial resources you propose to use, confirmation of their availability and a program for completion. Note that the Principal retains the right to take action under Clause 17.4.I am the contact person for enquiries and correspondence on this matter. My contact details are » insert contact details.Yours sincerely » insert the name of the person issuing the notice» insert the person ‘s position title**for the Principal** |

## Option 3 – if the Contractor advised that it is unable to perform its obligations under the Contract.

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| » insert the dateThe Contractor,» insert the name of the ContractorABN » insert the Contractor ‘s ABN» insert the Contractor ‘s addressAttention: » insert the name of the Contractor’s nominated representative**» insert the Contract nameContract No. » insert the Contract No.****Termination of the Contract**On » insert the date of the notice under Clause 17.1, your company was requested to confirm that it has the financial resources to perform its obligations under the Contract and intends to complete the work under the Contract.In response, you advised that your company was unable to perform its obligations under the Contract.The Principal is therefore terminating the Contract, in accordance with Clause 17.4 of the General Conditions of Contract, with effect from » insert the date on which the termination will take effect.You are instructed to attend a meeting on the Site on » insert a date (agreed beforehand if possible) two or three days before the date on which termination takes effect to jointly take an inventory of plant and equipment and agree what will remain to complete the Works and what is to be removed. You must leave the Site, removing the agreed plant and equipment, before » insert the date of termination. Please advise by » insert an appropriate date two or three days before the proposed Site meeting if you will be unable to attend the meeting on the Site.Yours sincerely,» insert the name of the person issuing the notice» insert the person ‘s position title**for the Principal** |

## Guide Notes

1. In Option 1, the due date for the Contractor’s response should be based on evidence of when the Contractor received the notice under Clause 17.1. Do not send this termination letter until at least a day after the Contractor’s response was due.
2. Amend Option 2 as required if you there is a Receiver or Liquidator instead of an Administrator. Further correspondence may be required to obtain access to the Site and deal with ownership and use of materials, equipment and documents held on the Site.
3. In Option 2, ensure the date for termination to take effect is after the date set for the Administrator’s response.
4. It is necessary to ensure that this notice is served promptly on the relevant entity, at its current registered business address. The notice should be delivered by hand, by courier or by registered post. Obtain evidence of the time and date of receipt. Facsimile or email transmission may be used in addition to delivery of a hard copy, to expedite prompt action. Normal postal services should not be relied upon for this notice.