

28. If the Contractors shall fail to commence the performance of the services hereby contracted to be by them performed according to the provisions hereof, or having commenced the same shall refuse or wilfully neglect to carry on the same according to the true intent and meaning of these presents, they shall forfeit and pay to the said Postmasters-General the sum of twenty-five thousand pounds, to be equally divided between the Postmasters-General, as and by way of liquidated damages and not by way of penalty.

29. All and every the sums of money hereby stipulated to be paid by the Contractors shall be considered as liquidated or ascertained damages, whether any damage or loss shall have or shall not have been sustained, and may be set off by the Postmasters-General, or either of them, against any moneys payable to the Contractors under or by virtue of these presents, or may be enforced by both or either of the Postmasters-General as a debt due, with full costs of suit, at their or his discretion: Provided always that the payment by the Contractors of any sums of money for any neglect or default in the observance or performance of the covenants or agreements herein contained shall not in any manner prejudice the rights of the Postmasters-General, or either of them, to treat such defaults as a non-observance or non-performance of this contract on the part of the Contractors.

30. The Contractors shall if so required, upon the acceptance of their tender, with two sureties to be approved by the Postmasters-General, jointly and severally enter into a bond in the penal sum of twenty-five thousand pounds conditioned for the due and faithful performance of the covenants and agreements on the part of the Contractors herein contained, according to a draft or form already agreed upon.

31. If any dispute, question, difference or controversy, shall arise between the Postmasters-General or their respective Governments and the Contractors touching these presents, or any clause or thing herein contained, or the construction thereof, or any matter in any way connected with these presents, or the operation hereof, or the rights, duties, or liabilities of the said Governments respectively, or of the Contractors, in connection with the premises, then and in every or any such case the matter in difference shall be referred to arbitration in manner hereinafter mentioned, and the award of the arbitrator or the arbitrators or the umpire appointed as hereinafter mentioned, as the case may be, shall be binding and conclusive in every respect.

32. Unless the Postmasters-General and the Contractors shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute, question, difference, or controversy shall be referred; and every appointment of an arbitrator shall be made on the part of the Postmasters-General under their hands, and on the part of the Contractors under their corporate seal and hands, or under the corporate seal or the hand of either of them, or under the hand of the accredited agent of the Contractors, if any, at Sydney or Auckland; and such appointment shall be made in duplicate; and be delivered one part to the other party and the other part to the arbitrator on the part of the party by whom the same shall be made; and after any such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters required to be referred to arbitration, shall have been served upon the Postmasters-General respectively, or given to either of the Contractors, or left for them at their last known office or place of business in San Francisco, Sydney, or Auckland (if any), as the case may be, by the one party on the other party, to appoint an arbitrator, such last-mentioned party fail to appoint an arbitrator, then upon such failure the party making the request, and having appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

33. If before the matters so referred shall be determined, any arbitrator appointed by either party die or become incapable, the party by whom such arbitrator was appointed, his successors in office, or successors or assigns, may nominate and appoint in writing some other person to act in his place; and if for the space of fourteen days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*, and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

34. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire, to decide on any such matters on which they shall differ, or which shall be referred to him; and if such umpire shall die or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire, on the matters so referred to him, shall be final.

35. If, in either of the cases aforesaid, the said arbitrators shall refuse, or shall for fourteen days after the request of either party to such arbitration neglect, to appoint an umpire, the Governor for the time being of the Colony of New South Wales shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him shall be final.

36. If when a single arbitrator shall have been appointed, or shall be proceeding *ex parte* under any of the provisions herein contained, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration in the same manner as if no such arbitrator had been appointed.

37. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for fourteen days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

38. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within three calendar months after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators