

ARTICLES OF AGREEMENT

ENTERED INTO BETWEEN

THE GOVERNOR OF NEW ZEALAND
AND MESSRS. BROGDEN

RELATIVE TO THE

PURCHASE OF RAILWAY MATERIAL.

PRESENTED TO BOTH HOUSES OF THE GENERAL ASSEMBLY, BY COMMAND OF
HIS EXCELLENCY.

WELLINGTON,

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1872.

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ARTICLES OF AGREEMENT BETWEEN THE GOVERNOR OF NEW ZEALAND AND MESSRS. BROGDEN

RELATIVE TO THE PURCHASE OF RAILWAY MATERIAL.

ARTICLES OF AGREEMENT made and entered into this tenth day of August, one thousand eight hundred and seventy-two, between the Governor of New Zealand, in the name and on behalf of Her Majesty the Queen, of the one part, and Alexander Brogden, Henry Brogden, and James Brogden, all of Queen Square, in the City of Westminster, in England, Railway Contractors (hereinafter referred to as "the Contractors"), of the other part.

WHEREAS by Articles of Agreement made and entered into on the eighteenth day of December last between the parties hereto, it was stipulated and agreed that, in the event of the Contractors entering into contracts as therein provided for the construction by them of lines of railway to be specified by the said Governor as therein mentioned, at prices agreed upon between the Governor and the Contractors, amounting in the aggregate to a sum not less than seven hundred thousand pounds (£700,000), the several contracts for which railways were in the Articles of Agreement now in recital, and are in these presents, referred to as Contract No. 3 (three), that a certain other contract previously made and entered into between the said Governor and the Contractors for the construction of railways (which said other contract was in the Articles of Agreement now in recital, and is in these presents, referred to as Contract No. 2), should be annulled, cancelled, and of no effect: And whereas the Governor has, on behalf of the Queen, specified to the Contractors certain railways which, subject to the provisions of the said agreement of the eighteenth day of December, one thousand eight hundred and seventy-one, are to be constructed under Contract No. 3: And whereas the price of iron rails and other materials for the permanent way of such railways, and of rolling stock for the same, which would be procured for the same by the Contractors from England for the purposes of such railways, is subject to such fluctuations, and is so uncertain, that it is expedient that the supply thereof should not be included in the contracts for such railways, but that, in lieu thereof, the same should be provided by the Governor on behalf of the Queen: And whereas it is expedient that the Contractors should advise and assist the Governor in purchasing the same, to the extent and subject to the conditions hereinafter set forth: Now these presents witness that the Governor, on behalf of Her Majesty the Queen, her heirs and successors (all of whom are hereinafter included in the term "the Queen"), and so far as the covenants hereinafter contained are to be performed or observed on her or their parts respectively, doth hereby covenant with the Contractors, their executors, administrators, and assigns (all of whom are hereinafter included in the expression "the Contractors"), and the Contractors and each of them for themselves and himself, and their respective heirs, executors, administrators, and assigns (so far as such covenants hereafter contained are to be performed or observed on their parts), do and doth hereby covenant with the Governor on behalf of the Queen, her heirs and successors, in manner hereinafter appearing (that is to say)—

1. The Contractors agree that if and whenever the Agent-General in England for the time being of New Zealand shall deliver to them in England the particulars, plans, or specifications of any rails or other materials for permanent way, or of any rolling stock which the Governor, on behalf of the Queen, shall have agreed to supply to the Contractors for the purposes of any of the said specified railways in respect of which a contract for construction shall have been entered into as aforesaid, and require them to call for tenders for the supply of the same, the Contractors will, within such time as shall from time to time be fixed by such Agent-General, at the expense of such Agent-General, and subject to terms and conditions approved of by him, but in their own names, call upon such person or companies as shall for the purpose be previously approved of by such Agent-General and the Contractors to tender for the supply of such materials and rolling stock as aforesaid: Provided, however, that the total amount which the Contractors may require to be expended under the present agreement in the purchase of such materials and rolling stock as aforesaid shall not exceed in the aggregate the sum of two hundred and fifty thousand pounds (£250,000).

2. That the Contractors will, at such time and place as such Agent-General shall from time to time fix and determine, and in the presence of such Agent-General, open such tenders, and deliver the same to such Agent-General; and thereupon will give to such Agent-General their advice in the selection and determination of which (if any) of such tenders it shall appear expedient to accept.

3. Only such of the said tenders as shall be approved of by such Agent-General shall be accepted by the Contractors.

4. The Governor, for and on behalf of the Queen, her heirs and successors, agrees with the Contractors that the Agent-General will, within the longest period fixed in such contracts as may be entered into by the Contractors for the construction of the specified railways or any of them as aforesaid, take the necessary steps under this present agreement for enabling the Contractors to call for tenders for such materials and rolling stock as aforesaid, to the full extent of two hundred and fifty thousand pounds (£250,000) at the least.

5. The Governor may, as he thinks fit, cause any materials or rolling stock for which any such tenders may be accepted to be appropriated to or used in the construction of or in connection with any railway or railways constructed for the Queen by the Contractors, either under the said Contract

No. 3 or the said Contract No. 2 or any other contract: Provided, however, that, in the event of the said Contract No. 3 not being entered into, the Contractors shall, if the Governor from time to time require them so to do, accept from the Governor, acting on the part of the Queen, such of the said materials and rolling stock as the Governor may appropriate to and require to be used in the construction of or in connection with any of the railways constructed under the said Contract No. 2, and shall forthwith, after the cost of any such railway is agreed on for the purposes of the said Contract No. 2, refund to the Governor all moneys paid and disbursed on or about the purchase of such proportion of the said materials and rolling stock, and the carriage, shipment, and conveyance thereof to the Colony, and all percentages paid to the Contractors on account thereof under this agreement.

6. The Queen contracts that such Agent-General will, on behalf of the Queen, pay to the Contractors in England five pounds for every hundred pounds worth of material and rolling stock as aforesaid comprised in any accepted tender, such percentage to be paid within thirty days after the acceptance of each such tender: Provided always that if from any cause whatever any such materials or rolling stock as aforesaid included in any such accepted tender, and in respect of which such commissions as aforesaid shall have been paid to the Contractors, be not delivered in accordance with the terms of such tender, the Contractors shall and will, on being requested so to do by the said Agent-General, and without charge for commission therefor, but at the expense of the said Agent-General, call for fresh tenders for materials and rolling stock similar to such materials and rolling stock as shall be so undelivered, and shall, in relation to such fresh tenders and such materials and rolling stock, do and perform, without any charge therefor, all such acts, matters, and things as by this agreement they are bound to do in relation to the original tenders, and the material and rolling stock comprised therein; and the Contractors will so on from time to time, whenever any materials or rolling stock comprised in any fresh tender shall not be delivered, and if the Contractors be required by the said Agent-General so to do, call for tenders, and give their advice and assistance in relation thereto without charge until materials and rolling stock shall have been delivered to an amount in cost equal to the amount on which commission shall have been paid to them under this agreement.

7. The Contractors agree that, except as aforesaid, they will not take or accept on their own accounts any profit or proportion of profit, or any commission, discount, or allowance from the tenderer, manufacturer, vendor, or any other person for or in respect of any such materials or rolling stocks as aforesaid agreed to be supplied under any such accepted tender; and that any profit or proportion of profit, commission, discount, or allowance received or recoverable, or paid or payable for or in respect of any such materials and rolling stock as aforesaid, shall be the property of the Queen, and be paid to such Agent-General on her behalf, and if paid or payable to the Contractors, they will, on receiving the same, pay the same over to such Agent-General.

8. Whereas the materials and rolling stock intended to be purchased under the terms of this present agreement would, under the said Contract No. 3, have been supplied by the Contractors, and the cost thereof would have formed part of the sum of seven hundred thousand pounds (£700,000), contracts to the amount of which it was agreed by the said Contract No. 3 should be entered into before the said Contract No. 2 was annulled: And whereas the commission to be paid as aforesaid to the Contractors in respect of the advice and assistance given by them in the matters aforesaid is at the rate of five pounds per centum in lieu of the estimated profit of ten pounds per centum, which the Contractors assure the Government they expected to have earned had the terms of the said Contract No. 3 been adhered to: It is agreed by and between the parties hereto as follows:—The said sum of seven hundred thousand pounds (£700,000) shall be reduced by one hundred and twenty-five thousand pounds (£125,000), being one-half of the said sum of two hundred and fifty thousand pounds (£250,000) to be expended as aforesaid; and it is hereby agreed that, upon the parties hereto entering into contracts for the construction of specified railways to the extent of not less than five hundred and seventy-five thousand pounds (£575,000), exclusive of the cost of such materials and rolling stock as aforesaid, the said Contract No. 2 shall be annulled, cancelled, and of no effect.

In witness whereof, Sir George Ferguson Bowen, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, the Governor of the said Colony of New Zealand, hath, in the name and on behalf of Her Majesty the Queen, hereunto set his hand, and hath caused the Seal of the said Colony to be hereunto affixed; and James Brogden hath, under and by virtue of a power of attorney from the said Alexander Brogden, James Brogden, and Henry Brogden, dated the tenth day of August, one thousand eight hundred and seventy-two, hereunto set their hands and seals, the day and year firstly hereinbefore written.

Signed by Sir George Ferguson Bowen,
Governor of the Colony of New Zealand, and
the Seal of the Colony affixed hereto in the
presence of

J. D. ORMOND.

Witness—
WILLIAM FOX.

G. F. BOWEN,
Governor.

Signed, sealed, and delivered by the said
Alexander Brogden, James Brogden, and Henry
Brogden, by their attorney the said James
Brogden, in the presence of

ALEXANDER BROGDEN,
By his Attorney, James Brogden.
(Seal)
HENRY BROGDEN,
By his Attorney, James Brogden.
(Seal)
JAMES BROGDEN.
(Seal)