

# CORRESPONDENCE

WITH

## MESSRS. JOHN BROGDEN AND SONS

RELATIVE TO

### GENERAL CONDITIONS AND DATA FOR RAILWAYS.

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

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WELLINGTON.

—  
1872.



## CORRESPONDENCE WITH MESSRS. BROGDEN, RELATIVE TO CONDITIONS, ETC., FOR RAILWAYS.

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### No. 1.

MESSRS. TRAVERS and OLLIVIER to the Hon. the MINISTER for PUBLIC WORKS.

SIR,—

Wellington, 15th March, 1872.

Some few days ago the Messrs. Brogden placed in our hands the General Conditions, upon which the Government proposed that they should tender for the construction of the lines of railway submitted to them under Contract No. 3. We were informed by Mr. Brogden that, immediately on receiving those conditions from you, he intimated that he could not tender under them, and he has instructed us to forward you a draft of conditions, &c., in a form which he conceives to be reasonable as between both parties, and under which he will be prepared, when supplied with the necessary data, as provided by the contract, to tender for the construction of the proposed works. As matters of this kind ordinarily come under the consideration of engineers, we would suggest that the Engineer-in-Chief should be placed in communication with Mr. Brogden respecting them, in order to avoid unnecessary delay in adjusting any disputed points. We may state, however, that the accompanying conditions have been prepared from conditions settled by eminent engineers in England, in connection with both home and foreign railways.

The Hon. the Minister for Public Works.

We have, &c.,

TRAVERS and OLLIVIER.

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### No. 2.

MEMORANDUM by ENGINEER-IN-CHIEF and ATTORNEY-GENERAL.

It is found that to several of the General Conditions hitherto introduced into railway contracts here, Mr. Brogden objects, and it is necessary that the Government shall determine what is to be done as to his objections, and say whether the printed conditions are to be altered to meet his objections or not. The following are the more important:—

1. Mr. Brogden wants an arbitration clause providing for the appointment of three arbiters; but would agree to an arbiter being named in the contract.
2. Mr. Brogden objects to the power granted, in clause 12 of printed conditions, to the Minister, to determine absolutely the contract in case of breach, consenting only to the alternative provided, that the Minister may take the work out of the Contractors' hands.
3. Objects to the Government having power to omit works without paying him 10 per cent. anticipated profits.
4. Objects to making good damage done by floods and force of waves, unless bad workmanship or bad arrangements should have caused it.
5. Objects to truck system clause.
6. Objects to Minister being able to suspend payments for a month to make inquiry.
7. Proposes that Minister shall be able to pay for extra work done without written authority, but which Engineer approves in writing, within one month.
8. Objects generally to the Engineer being the arbiter.

Until these are determined, the Engineer-in-Chief and the Attorney-General are unable to settle the general conditions.

JOHN CARRUTHERS,  
Engineer-in-Chief.  
JAMES PRENDERGAST.

Public Works Office, 25th March, 1872.

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### No. 3.

MEMORANDUM by ENGINEER-IN-CHIEF on Mr. BROGDEN'S Objections to Printed Conditions.

*Objections.*

1. It is unusual not to make the Engineer sole arbiter as regards quality and quantity of work, explanation of plans, settlement of prices for work not mentioned in Schedule of Prices, or extra to the contract; and I think it is undesirable to leave these matters to arbitration.

2. Contract No. 2 gives the power of taking work out of Contractors' hands for breach, but not of absolutely determining contract. This is also in accordance with custom, but there are numerous precedents for the Government retaining the power of absolute determination of contract.

3. I do not think this will be an important item. As far as my experience goes, it is always provided that work may be taken out of contract without paying anticipated profits.

CORRESPONDENCE WITH MESSRS. BROGDEN

4. Mr. Brogden says that damage by floods was, after long discussion, arranged in Contract No. 2 to be borne by Government. If the Government agree to this alteration, it should only be in case of great and unusual flood. As to force of waves, I think it might be conceded, the Engineer being the sole judge as to whether it was by default of Contractor that work was injured.

5. In remote parts of works it will be almost necessary for Messrs. Brogden to open stores for workmen.

6. This is an unusual clause, and I think it should be conceded.

7. This I think reasonable, as work in case of emergency may be done which, had there been time, would have been ordered.

8. Generally the Engineer is made sole arbiter in all cases of dispute: this I think undesirable, as giving too much power to Engineer. In cases mentioned above I do not see how it can be avoided.

JOHN CARRUTHERS,  
Engineer-in-Chief.

MEMO.—I concur in all the observations by the Engineer-in-Chief, except that I doubt the expediency of having any arbiter except the Engineer-in-Chief.

JAMES PRENDERGAST.

Public Works Office, Wellington, 25th March, 1872.

No. 4.

MESSRS. BROGDEN to the HON. the MINISTER FOR PUBLIC WORKS.

SIR,—

Wellington, 26th March, 1872.

We find that there is likely to be some further delay in the settlement of the general conditions which are sought to be attached to our contract, on account of the absence of yourself and the Ministry from Wellington.

That no more time may be lost by us, our Mr. James Brogden and Mr. Henderson leave to-night for the South, in order to gain what preparatory information in reference to the named railways they may be able to obtain.

Our attorney, Mr. Travers, is empowered to act for us during our absence.

We have, &c.,

The Hon. the Minister for Public Works.

JOHN BROGDEN AND SONS.

No. 5.

MR. TRAVERS to the HON. the MINISTER FOR PUBLIC WORKS.

SIR,—

Wellington, 2nd April, 1872.

On Thursday last I was favoured with an interview with the Hon. the Attorney-General and Mr. Carruthers, in reference to the discussion between yourself and Messrs. Brogden as to the form of conditions on which they would be required to tender for the construction of railways under Contract No. 3. If I rightly apprehended on that occasion, the Government insisted—

1. That in all cases in which arbitration would be necessary, and in which no special provision was made in the conditions for the settlement of disputed questions, the Engineer-in-Chief was to be the sole referee.
2. That condition No. 12 should be adhered to.
3. That the power to omit any part of the works should be adhered to.

Upon this point the Attorney-General and Mr. Carruthers intimated that the Government might possibly agree to limit the extent to which this power would be exercised, as say to £20 per cent. on the total contract price.

4. That the Contractor should be liable to make good damage from floods, &c., until completion of works.

Upon this point I understood that this liability would not be insisted upon during the period of maintenance.

5. That the clause against trucks should be retained.

I communicated these matters to Mr. Brogden by telegram, and he has instructed me to ask you to be good enough to inform me whether I rightly understood the wishes of the Government, and whether they will insist absolutely on these conditions.

I have, &c.,

The Hon. the Minister for Public Works.

WM. THOS. LOCKE TRAVERS.

No. 6.

MR. CARRUTHERS to MR. TRAVERS.

SIR,—

Wellington, 2nd April, 1872.

I have just received a telegram from Mr. Ormond, in which he states that he will return to Wellington by first steamer after the Governor's visit; this will be the "Nevada." Will you please let Mr. Brogden know.

It is of course very desirable that Mr. Brogden should meet Mr. Ormond, to arrange, if possible, the general conditions of contract, and Mr. Ormond is anxious to let Mr. Brogden know that he is coming to Wellington, so that they may meet.

I have, &c.,

J. CARRUTHERS,  
Engineer-in-Chief.

W. T. L. Travers, Esq., Wellington.

## No. 7.

Mr. TRAVERS to Mr. CARRUTHERS.

SIR,—

Wellington, 3rd April, 1872.

I will telegraph the substance of your note to Mr. Brogden, but before doing so I wish to have a reply to my letter, of yesterday's date, addressed to the Minister for Public Works. Mr. Brogden leaves for Christchurch on Friday morning, so that I can telegraph to him up to Thursday night.

J. Carruthers, Esq., Engineer-in-Chief.

I have, &amp;c.,

WM. THOS. LOCKE TRAVERS.

## No. 8.

Mr. CARRUTHERS to Mr. TRAVERS.

SIR,—

Wellington, 3rd April, 1872.

I am of course unable to give you any information as to any reply to your letter addressed to Minister for Public Works.

He will I suppose reply in due course, and the purport of your letter has been telegraphed to him.

W. T. L. Travers, Esq.

I have, &amp;c.,

JOHN CARRUTHERS.

## No. 9.

MEMORANDUM of the Heads of an Agreement entered into by Messrs. Brogden and Co., and the Government, represented by Mr. Reeves, on the 10th April, 1872, the subject of the conference being the differences which have arisen in respect to the General Conditions hitherto in force with regard to the construction of Railways in New Zealand.

1. On the subject of arbitration it was decided that, in case the Governor or Minister for Public Works, as the case may be, and the Contractors shall not agree, the matter shall be determined by arbitration; and every such matter as to which they shall not agree, dispute or difference shall be settled by arbitration, to be conducted by reference to the sole decision of the Judge of the Supreme Court in New Zealand within whose district the cause of difference or dispute may have arisen. This submission to arbitration may be made a rule of the Supreme Court of New Zealand, or of any of the superior Courts of Westminster, as the case may be or required. The costs of and attending the arbitration and award shall be in the discretion of the arbitrators.

2. It was agreed that clause 12 should be allowed to remain, subject to the understanding that the right of the Contractors to appeal to arbitration on all points included in the clause should not be prejudiced.

That clause 6 shall be retained, but that an allowance of 10 per cent. shall be made to the Contractors on any saving of expenditure which may result from their recommendations.

That clause 18 (against floods) can be retained, if the Government consider it advisable to do so.

That clause 23 (against the truck system) shall be retained, omitting the words, "at least once in every fortnight."

W. REEVES.

Subject to approval by other Ministers, of employment of Judges as arbitrators in their several districts.

JAMES BROGDEN.

## No. 10.

The Hon. W. GISBORNE to the JUDGES of the SUPREME COURT.

SIR,—

Public Works Office, Wellington, 27th April, 1872.

I have the honor to forward you a copy of the General Conditions which, subject to some modifications, are to form part of certain contracts proposed to be entered into between the Government and Messrs. Brogden and Sons for the construction of railway works in New Zealand.

Messrs. Brogden object to leaving to the Engineer-in-Chief or the Minister the decision of matters which, by the conditions numbered from 1 to 30, both inclusive, are left to the determination of the Engineer or Minister, as the case may be.

It has been proposed that the conditions should provide for giving an appeal from the decision of the Engineer or the Minister, as the case may be, to the Judge of the Supreme Court of the Judicial District in which the works are being carried on, and that the same Judge should be the arbiter referred to in the 31st clause of the conditions.

I shall feel obliged by your informing me whether you are willing to accept the duties of arbitrator in the cases proposed, or if your Honor should entertain an objection to acting as arbitrator on matters arising under some of the conditions, and not as to others, will you be so good as to state which of the matters you would be willing to undertake the decision of as arbiter.

I have, &amp;c.,

W. GISBORNE.

