35. **INCLEMENT WEATHER/CONSTRUCTION INDUSTRY**

35.1 This Inclement Weather clause sets out the full rights, obligations and entitlements of the parties and establishes the conditions under which payment for periods of inclement weather shall be made.

35.2 This Inclement Weather clause is to be read and observed in lieu of the provisions of the Award.

35.3 The purpose of this clause is to set out the procedures and processes which must apply concerning the suspension of work in areas exposed to inclement weather as defined, and prescribes the conditions regulating payment of ordinary time wages for employees who cannot be re-assigned to work out of the inclement weather.

35.4 **Definition of Inclement Weather**

   **Inclement weather** shall mean the existence of rain or abnormal climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for employees exposed thereto to continue working whilst the same prevail.

35.5 **Restriction of payment**

   35.6.1 An employee shall not be entitled to payment for inclement weather as provided for in this clause unless the employee remains on the job until the provisions set out in this clause have been observed.

   35.6.2 The entitlement to payment for time lost due to Inclement Weather is an entitlement limited to ordinary time lost, and does not apply to overtime and/or weekend work. Should overtime or weekend work be suspended due to inclement weather, then overtime payments will cease subject to the provisions of this Agreement concerning minimum payment for Saturdays and Sundays in which case the minimum time payments as prescribed by the Agreement shall apply.

   35.6.3 All necessary steps shall be taken to ensure a full working understanding of the inclement weather standards, as contained in this Agreement, is achieved and maintained by the Company and Employees.

   35.6.4 Should a portion of the project be affected by inclement weather, all other employees not affected shall continue to work in accordance with the appropriate agreement provisions, regardless that some employees may be entitled to cease work due to inclement weather.

   35.6.5 Should a portion of the project be affected by inclement weather, employees can be transferred to another work location under cover on the site or to another site in accordance with the provisions prescribed herein.

   35.6.6 Prior to any employee leaving the site due to inclement weather, consultation shall take place between Employee Representatives and Site Management. Any stoppage of work, or withdrawal from site, without due consultation will mean that all involved Employees are denied an entitlement to payment as per this clause.
35.6.7 **Dewatering**

a) Where a part of a site is affected by surface water following a period of rain, thus rendering some areas unsafe for productive work, consistent with the company's obligations under the OHS Act, all non trades employees shall assist in 'dewatering' their own work site or area if it is so affected. Such work to be paid at single time rates. Productive work will continue in areas not so affected.

b) Where the whole of a site is so affected by surface water following a period of rain that all productive work is suspended by agreement of the parties, then dewatering will proceed as above with employees so engaged being paid at penalty rates as is the case for safety rectification work. When other employees are undertaking productive work in an area or areas not so affected then dewatering will only attract single time rates.

c) To avoid any confusion any 'dewatering' time which prevents an employee from being engaged in their normal productive work is not included in any calculation for the purposes of determining whether an employee is entitled to go home due to wet weather (refer clause 35.14). Further, it does not affect an employees' entitlement under clause 35.10.

35.7 **Conference requirement and procedure**

35.7.1 The employer, or the employers' representative, shall, when requested by the employees or a representative of the employees, confer (within a reasonable period of time which should not exceed 30 minutes) for the purpose of determining whether or not conditions are inclement. Weather shall not be regarded as inclement unless it is agreed at such conference.

35.7.2 Provided that if the employer or the employers’ representative refuses to confer within such reasonable period, employees shall be entitled to cease work for the rest of the day and be paid inclement weather.

35.8 **Cessation and Resumption of Work**

35.8.1 At the time employees cease work due to inclement weather the Company or the Company's representative on site and the employee's representative shall agree and note the time of cessation of work.

35.8.2 After the period of inclement weather has clearly ended the employees shall resume work and the time shall be similarly agreed and noted.

35.9 **Hot Weather Guidelines**

35.9.1 Under this Agreement, temperature of or above 35°C shall be defined as constituting 'inclement weather' for work in the Greater Melbourne area. This definition will be subject to review in other regions.

35.9.2 When it is expected that the temperature will be 35°C or more, or when the temperature approaches 35°C, the parties on site shall confer regarding the performance of work.

35.9.3 As part of a process leading to improvements, it is recognised that hot weather procedures including relocation, must be part of a formal OH&S procedures developed, adopted and managed on a project basis having regard to the different conditions that may prevail on projects in various locations.
**Working Arrangements**

35.9.4 The current industry practice whereby all employees on site working in direct sunlight were relocated to shaded or air-conditioned areas when the temperature reached 32°C, will no longer operate.

35.9.5 At temperatures below 35°C workers are not to be relocated out of direct sunlight unless the work environment creates a serious risk to their health and safety, having regard to the nature of the tasks being undertaken, provided that the task or activity being performed is completed and the penalty provisions as for emergency work under the Award shall apply.

35.9.6 Once the temperature reaches 35°C work will cease, and workers may leave the site, provided that the task or activity being performed is completed and the penalty provisions as for emergency work under the Award shall apply.

35.9.7 During periods of hot weather, work in air-conditioned environments shall continue as normal. Workers will walk a reasonable distance through the open to and from amenities and the air-conditioned workspace, provided it does not pose a serious threat to their health or safety.

35.9.8 By agreement with the OH&S committee and head contractor during periods of inclement weather (heat) the Saturday break roster can be applied to weekday work.

35.9.9 It is expressly agreed that, other than as provided for in 35.9.5, work shall not cease at any temperature below 35°C, and any stoppage of work prior to 35°C shall be a breach of this Agreement, rendering the employees ineligible for any payment which may otherwise accrue.

**Temperature Measurement**

35.9.10 Temperature will be measured by the nearest automatic Melbourne Bureau of Meteorology Monitoring Station for example (but not limited to): Melbourne, Moorabbin, Dunns Hill, Melbourne Airport, Frankston, and Point Wilson. At the commencement of each project, the onsite management and employee representatives shall agree which is to be the applicable automatic weather monitoring station or shall determine an alternative method of temperature measurement.

35.9.11 **Shift Workers**

All shift workers (i.e. Employees whose shift commences at or after the end of the ordinary day work hours) presenting for work when the temperature is at or over 35°C will remain on site in air conditioned amenities for a minimum two hours, holding themselves available to commence work should the temperature fall below 35°C.

**Entitlement to payment**

An employee shall be entitled to payment by the employer for ordinary time lost through inclement weather for up to 32 hours in every four weeks. For the purpose of this sub-clause the following conditions shall apply:

35.10.1 The first period shall be deemed to commence on 28 February 2005 and subsequent periods shall commence at four weekly periods thereafter.

35.10.2 An employee shall be credited with 32 hours at the commencement of each four weekly period.

35.10.3 The number of hours at the credit of any employee at any time shall not exceed 32 hours.
35.10.4 If an employee commences employment during a calendar month the employee shall be credited 32 hours where the employee commences on any working day within the first week; 24 hours where the employee commences on any working day within the second week; 16 hours where the employee commences on any working day within the third week; and 8 hours where the employee commences on any working day within the fourth week.

35.10.5 No employee shall be entitled to receive more than 32 hours inclement weather payment in any calendar month.

35.10.6 The number of hours credited to any employee under this clause shall be reduced by the number of hours for which payment is made in respect of lost time through inclement weather.

35.10.7 Payment under this clause shall be weekly.

35.10.8 Provided further and subject to 35.10.4 hereof, an employee working on a part-time basis pursuant to the award shall be entitled to payment on a pro-rata basis according to the number of ordinary hours agreed to be worked in the four-week period. The method of calculation of a part-time daily hire employee’s proportionate entitlement shall be as follows:

\[
\text{32 \times Number of hours agreed to be worked during the four-week period} \div 152
\]

35.11 Transfers

Employees may be transferred from one location on a site where it is unreasonable to work due to inclement weather, to work at another location on the same site, or another site, which is not affected by inclement weather subject to the following:

35.11.1 No employee shall be transferred to an area not affected by inclement weather unless there is work available in the employees’ classification.

35.11.2 Employees may be transferred from one location on a site to work in areas which are not affected by conditions of inclement weather even though there may not be work for all employees in such areas.

35.11.3 Employees may be transferred from one site to another site and the employer shall provide, where necessary, transport.

35.12 Completion of Concrete Pours Laying CTCR and Emergency Work

35.12.1 Except as provided in this sub-clause an employee shall not work or be required to work in the rain.

35.12.2 Employees shall not be required to start a concrete pour in inclement weather.

35.12.3 Where a concrete pour has been commenced prior to the commencement of a period of inclement weather employees may be required to complete such concrete pour to a practical stage and for such work shall be paid at the rate of double time calculated to the next hour, and in the case of wet weather shall be provided with adequate wet weather gear.
35.12.4 If an employee’s clothes become wet as a result of working in the rain during a concrete pour the employee shall, unless the employee has a change of dry working clothes available, be allowed to go home without loss of pay.

35.12.5 The provisions of 35.12.3 and 35.12.4 hereof shall also apply in the case of emergency work where the employees concerned and their delegates agree that the work is of an emergency nature and can start and/or proceed.

35.13 **Safety**

Where an employee is prevented from working at the employee’s particular function as a result of unsafe conditions caused by the inclement weather, the employee may be transferred to other work in the employee’s classification on site, until the unsafe conditions are rectified. Where such alternative is not available and until the unsafe conditions are rectified, the employee shall remain on site. The employee shall be paid for such time without reduction of the employees’ inclement weather entitlement.

35.14 **Additional Wet Weather Procedure**

35.14.1 **Remaining On Site**

Where employees are prevented from working because it is raining:

a) for more than an accumulated total of four hours of ordinary time in any one day; or

b) after the meal break, for more than an accumulated total of 50% of the normal afternoon work time; or

c) during the final two hours of the normal work day for more than an accumulated total of one hour,

the employer shall not be entitled to require the employees to remain on site beyond the expiration of any of the above circumstances.

Provided that where, by agreement between the employer and/or the employers representative and the employee’s representative the employees remain on site beyond the periods specified above, any such additional wet time shall be paid for but shall not be debited against the employees’ hours (refer clause 35.10).

35.14.2 **Rain at Starting Time**

Where the employees are in the sheds, because they have been rained off, or at starting time, morning tea, or lunchtime, and it is raining, they shall not be required to go to work in a dry area or to be transferred to another site unless:

- The rain stops; or
- A covered walkway has been provided; or
- The sheds are under cover and the employees can get to the dry area without going through the rain; or
- Adequate protection is provided. Protection shall, where necessary, be provided for the employees’ tools.

In this clause, a dry area shall mean a work location that has not become saturated by rain or where water would not drip on the employees.