

### 35C. Bond for due performance of agreement

- (1) Where an agreement is made for the purposes of this Act between a person (“**the contractor**”) and —
  - (a) the Minister;
  - (b) a board or an agency board; or
  - (c) the Minister for Works or the State Supply Commission acting on behalf of the Minister, a board or an agency board,the agreement may include a performance bond.
- (2) A performance bond is a provision by which the contractor acknowledges that the contractor is bound in a specified sum if the contractor fails to observe and perform the terms, conditions and provisions of the agreement.
- (3) The contractor is liable to pay to the Minister, a board or an agency board as a debt the amount of any such bond if the contractor fails to observe and perform the terms, conditions and provisions of the agreement, and that debt may be recovered by proceedings in a court of competent jurisdiction.
- (4) In any proceedings to recover an amount referred to in subsection (3) —
  - (a) the amount is to be taken to be a genuine pre-estimate of the damage suffered and recoverable by the Minister, the board or the agency board, as the case may be, in respect of any non-observance or non-performance by the contractor;
  - (b) the contractor cannot plead and evidence is not admissible to show —
    - (i) that the damage so suffered and recoverable was less than that amount; or
    - (ii) that the amount or any part of it is a penalty or penal damages;
  - and
  - (c) the amount cannot be reduced or called in question by the court.
- (5) This section applies notwithstanding any rule of law to the contrary.
- (6) In subsection (1) —

“**Minister for Works**” means the body corporate created by section 5 of the *Public Works Act 1902*;

“**State Supply Commission**” means the body established by section 4 of the *State Supply Commission Act 1991*.

[Section 35C inserted by No. 17 of 1996 s.12.]