

BASIC WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



MASTER BUILDERS
AUSTRALIA

ABIC BW 2018 C

Commercial Basic Works Contract

REFERENCE COPY

Copyright © 2018



Australian
Institute of
Architects



Australian Institute of Architects
Master Builders Australia Limited

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the copyright holders.

Tender conditions

- A. Before submitting a tender, the contractor must:
1. visit the **site*
 2. be satisfied that the tender will cover all the contractor's obligations under this contract
 3. notify the architect of any discrepancy, error or omission in **schedule 1** and the tender documents
 4. fill out **schedule 1** and sign the contract.
- B. The tender is an offer from the contractor available for the owner to accept.
- C. The tender is valid for 20 **working days* from the closing date of tenders.
- D. The owner may not accept any tender or give any reasons for its decision.
- E. This contract comes into effect when the owner gives the contractor a signed copy of the contractor's tender.

Tenders close at 2.00pm on: _____ [date]

Schedule 1 Contract information

Item 1. Execution of the contract

The Owner

Name _____
 Address _____
 ABN _____ Tel: _____
 Mob: _____ Fax: _____
 Email: _____
Signed by the owner: _____

The Contractor

Name _____
 Licence/Registration No: _____
 Address _____
 ABN _____ Tel: _____
 Mob: _____ Fax: _____
 Email: _____
Signed by the contractor: _____

Item 2. The Architect

Name _____
 Registration No: _____
 Address _____
 ABN _____ Tel: _____
 Mob: _____ Fax: _____
 Email: _____

Item 3. Special conditions

Do other special conditions apply? Yes / No
 If yes, the conditions in **Schedule 2** apply.

Item 4. Contract price

1. **Cost of building work* \$ _____
 2. plus **GST* \$ _____
 3. **Contract price* \$ _____

Item 5. The **works*

The **works* are briefly described as: _____

The **works* are set out in the **contract documents* below:

1. Specifications: _____

2. Drawings: _____

3. Any other documents: _____

Item 6. The site of the **works*

The site of the **works* is: _____

Item 7. Provisional allowances for delay

The numbers of days of delay shown below are taken into account in the date for **practical completion* shown in **item 8** and do not entitle a claim for adjustment of time, unless the days shown for each delay are exceeded:

_____ **working days* reasonably allowed given the nature of the **works*;
 _____ **non-working days*;
 _____ disruptive weather conditions on **working days*.

Contractor to sign: _____

Item 8. Date for **practical completion*

Date: _____

Item 9. Rate for liquidated damages

\$ _____ per calendar day (incl. **GST*).

Item 10. Stages for progress claims

A description of the work to be completed in each stage must be provided in the space below, along with the percentage of the **contract price* for that stage:

Stage 1: _____ %
 Stage 2: _____ %
 Stage 3: _____ %
 Stage 4: _____ %
 Stage 5: _____ %
 Stage 6: _____ %
Total: _____ **100 %**

Item 11. **Provisional sums*

A description of the work to be covered by each **provisional sum* (without **GST*) and the sum allowed for the work:

Description	Sum Allowed
1: _____	\$ _____
2: _____	\$ _____
3: _____	\$ _____
4: _____	\$ _____

Item 12. **Prime cost sums*

A description of the work to be covered by each **prime cost sum* (without **GST*) along with the sum allowed for the work:

Description	Sum Allowed
1: _____	\$ _____
2: _____	\$ _____
3: _____	\$ _____
4: _____	\$ _____

Item 13. Charge-out rates

Item 13a

The **charge-out rate* (without **GST*) for each trade allowed for the work:

Trade:	<i>*Charge-out rate:</i>
Carpenter	\$ _____
Bricklayer	\$ _____
Plumber	\$ _____
Plasterer	\$ _____
Painter	\$ _____
Skilled labourer	\$ _____
.....	\$ _____
.....	\$ _____
.....	\$ _____

Item 13b

Percentage for contractor's overheads and profit: _____%
If nothing stated, default 20%

Item 14. *Official documents

Item 14a

*Official documents required to begin the *works but to be obtained by the contractor:

Item 14b

*Official documents required to complete the *works but to be obtained by the owner:

Schedule 2 Special conditions
(attach further conditions if necessary)

FERRENT

Contract Terms

A1 Cooperative contracting

- .1 The *parties* must act reasonably, cooperate in all matters and avoid obstructing the other.
- .2 **Clause A1.1** does not affect any other clause under this contract.

A2 Obligations of the contractor

1. The contractor must:
 - a begin the **works* within 10 **working days* after being given possession of the **site*
 - b diligently carry out all **necessary work* and complete the **works* to the standard set out in the **contract documents*
 - c maintain satisfactory industrial relations in relation to the **works*
 - d comply with all instructions issued under this contract by the architect.
 - e comply with all **relevant legislation* relating to work health and safety on the **site*

- f set out the **works*, direct the manner of performance of the **necessary work* and supervise the **necessary work* competently
- If the contractor cannot meet its obligations under this contract, it must immediately inform the architect and the owner in writing.
- If **relevant legislation* relating to work health and safety (**WH&S legislation**) requires it, the owner engages and appoints the contractor as the principal contractor for the **works* under the WH&S legislation and the contractor must discharge the responsibilities imposed on it as the principal contractor under that **relevant legislation*.

A3 Warranties by the contractor

1. The contractor warrants that it:
 - a. has the skill, technology and human and financial resources necessary to perform its obligations
 - b. will notify the owner **promptly* of any change in its ABN, **GST* registration, or the status of its licence or registration to carry out the **works*.

A4 Obligations of the owner

- 1 The owner must:
 - a appoint an architect to administer this contract
 - b only issue instructions to the contractor through the architect
 - c ensure that the architect, in acting as assessor, valuer or certifier, complies with this contract and acts fairly and impartially, having regard to the interests of the owner and the contractor.
- 2 If the owner's financial position changes to the extent that it may be unable to meet its obligations under this contract, it must immediately inform the contractor and the architect in writing.
- 3 If the owner named in **item 1 of schedule 1** does not own the property on which the **works* are to be carried out, written permission from the property owner for the **works* to be carried out must be provided by the owner to the contractor. The contractor is released from any obligations under the contract if the owner fails to provide this written permission.
- 4 Subject to **clause A4.5**, the owner warrants that all **owner-specified materials* comply with the **building code*.
- 5 If the contractor:
 - a is or becomes aware that the **owner-specified materials* don't or will not comply, or
 - b has a reasonable doubt about whether the **owner-specified materials* do or will comply,with the **building code*, then the contractor must **promptly* give the owner a notice and a copy to the architect, identifying the relevant **owner-specified materials* and stating that those **owner-specified materials* may not be compliant with the **building code* and may not be fit for the intended purpose. If the **owner-specified materials* are not compliant with the **building code* and the contractor has not given this notice, then the warranty in **clause A4.4** does not apply and is of no effect. A notice given under this clause is not a request for an instruction or **urgent instruction*.

A5 Architect to administer contract

1. The owner appoints the architect shown in **item 2** of **schedule 1** to administer this contract on behalf of the owner.
2. The architect is the owner's agent for giving instructions to the contractor.
3. The architect may issue written instructions at any time during this contract.
4. When acting as assessor, valuer or certifier, the architect acts independently and not as the owner's agent.
5. A newly-appointed architect is bound by the written decisions of any previous architect.

- .6 The architect is not the owner's agent for giving or receiving notices under **clauses A6 or A7, section P** and **section Q**.

A6 Disputing architect's certificate or written decision

- .1 If a **party* wishes to dispute a decision of the architect, the **party* must give the architect written notice under this clause within 15 **working days* after receiving a certificate, notice, written decision or written assessment.
- .2 If the **party* does not give notice under **clause A6.1**, the **party* cannot dispute the matter.
- .3 The architect must assess a notice given under **clause A6.1** within 10 **working days* and give a written decision to each **party*.
- .4 If a **party* wishes to dispute a written decision given under **subclause A6.3**, the requirements of **section P** apply.

A7 Disputing architect's failure to act

- .1 If a **party* wishes to dispute a failure of the architect to issue something, the **party* must give the architect written notice under this **clause A7** **promptly* after becoming aware of the failure of the architect to issue something.
- .2 The architect must assess a notice given under **subclause A7.1** and give a written decision to the **party* and the other **party* within 10 **working days*.
- .3 If a **party* wishes to dispute a written decision given under **subclause A7.2**, or the architect's failure to give that decision, the requirements of **section P** apply.

B Documents

B1 Discrepancies or omissions in documents

- .1 A **party* must **promptly* give written notice to the architect if a **party* discovers a discrepancy, ambiguity or omission in any of the **contract documents*.
- .2 The architect must **promptly* resolve the discrepancy, ambiguity or omission by giving a written instruction to the contractor and a copy to the owner.

B2 Order of precedence of documents

- .1 The order of precedence of the **contract documents* is as follows:
 - a any special conditions in **schedule 2**
 - b the conditions set out in this contract and **schedule 1**
 - c the specifications for the **works*
 - d the drawings for the **works*
- .2 Large scale drawings take precedence over small scale drawings.
- .3 The architect issues an instruction for a **variation* where the architect resolves a discrepancy, ambiguity or an omission differently to the order of precedence in **clause B2.1**.

B3 Contractor and owner must supply copies of **official documents*

- .1 The contractor must obtain all **official documents* listed in **item 14a of schedule 1** and give copies to the architect.
- .2 The owner must obtain all **official documents* listed in **item 14b of schedule 1** and give the contractor copies of these and the appropriate **contract documents* for the **works*.
- .3 A **party* and the architect must **promptly* give to the other **party* and the architect a copy of any **official document* received in relation to the **works*.
- .4 An **official document* is any:
 - a report, notice, order, permit, licence, approval or other document required or issued by an **authorised person* in relation to the **works*
 - b document listed in **item 14 of schedule 1**
 - c statutory approval
 - d approval for provision of **infrastructure services* to the **site*, such as gas, electricity, telecommunications, water, stormwater or sewerage
 - e other document required under any **relevant legislation*.

- .5 An **authorised person* is a building inspector or certifier or other person authorised under **relevant legislation* having jurisdiction over the **works*.

C Security

C1 Security provided to owner

- .1 The owner may hold as security a cash retention equal to 5% of the **contract price* as adjusted.
- .2 When preparing certificates for progress payments, the architect must deduct up to 10% of each payment until the value held by the owner equates to 5% of the **contract price* as adjusted.
- .3 The owner must hold the cash retention, including interest earned on it, less any bank fees or charges on the account, as trustee for the contractor in a separate bank account.
- .4 A legal or accounting practice's trust account will not discharge the owner's obligations under **clause C1.3**.
- .5 The owner must provide to the contractor evidence that the cash retention is held in accordance with this clause.

C2 Owner's right to draw on security

- .1 The owner may draw on the security provided to the owner if:
 - a the architect has issued a certificate in favour of the owner under **clause N4** or **N8** and the contractor has not paid the certificate or
 - b the engagement of the contractor is terminated and
 - c the owner has complied with **clause C3**.

C3 Procedure for owner to draw on security

- .1 To draw on the security under **clause C2**:
 - a the owner must first notify the contractor and the architect in writing of the basis and amount of the owner's entitlement
 - b the owner may then set off any unpaid amount against any amount of the security that the owner is obliged to release to the contractor.
- .2 If **clause C2.1b** applies, the architect must take into account the security then held when preparing a certificate in accordance with **clause Q5** or **Q7**.

C4 Owner's release of security on **practical completion*

- .1 Subject to **clause C3**, when the architect issues the notice of **practical completion*, the contractor is entitled to the release of 50% of the amount of the security then held.
- .2 The architect must give to the contractor a certificate equal to 50% of the amount of the security then held at the same time that the notice of **practical completion* is issued.
- .3 The procedures in **clause N6** and **N7** apply to the payment of the security.

C5 Owner's release of security on final certificate

- .1 Subject to **clause C3**, when the architect issues a final certificate for the whole of the **works* under **clause N5.2**, the owner must release to the contractor any remaining security less any amount owing to the owner under the certificate.

D Liability

D1 Risk before **practical completion*

- .1 Subject to **clause D2**, from the time the contractor is given possession of the **site* until 4.00pm on the day the architect issues the notice of **practical completion*, the contractor bears the risks described in **clauses D1.2, D1.3 and D1.4**.
- .2 The risk of injury to or illness, disease or death of any person occurring as a result of the **works*, on or in the immediate vicinity of the **site*.
- .3 The risk of loss of, or damage to the property of any person occurring as a result of the **works* on or in the immediate vicinity of the **site*.
- .4 The risk of loss of, or damage to any of the following items on or in the immediate vicinity of the **site*:
 - a the **works*
 - b any **necessary work*

- c on-site materials or equipment intended to be incorporated in the **works* and
- d plant, tools and equipment.

D2 Indemnity before **practical completion*

- .1 While the contractor bears the risks described in **clause D1**, the contractor must indemnify the owner against any liability arising from negligence or breach of contract, breach of statutory duty by the contractor or any of the contractor's employees, agents, licensees or subcontractors, or as a result of the contractor failing to examine the **site information* or inspect the **site*.
- .2 The contractor's obligation to indemnify the owner is reduced to the extent to which the owner or any of its employees, agents or separate contractors is responsible for the personal injury, illness, disease, death or loss or damage.

D3 Risk after **practical completion*

- .1 Subject to **clause D4**, from 4.00pm on the day the architect issues the notice of **practical completion*, the owner bears the risks described in **clauses D3.2, D3.3 and D3.4**.
- .2 The risk of injury to, or illness, disease or death of any person on or in the immediate vicinity of the **site*.
- .3 The risk of loss of, or damage to, the property of any person on or in the immediate vicinity of the **site*.
- .4 The risk of loss of, or damage to, any of the following items on or in the immediate vicinity of the **site*:
 - a the **works* and
 - b materials or equipment intended to be incorporated in the **works*.

D4 Indemnity after **practical completion*

- .1 While the owner bears the risks described in **clause D3**, the owner must indemnify the contractor against any liability arising from negligence or breach of contract or breach of statutory duty by the owner or any of the owner's employees, agents, licensees or separate contractors.
- .2 The owner's obligation to indemnify the contractor is reduced to the extent to which the contractor or any of its employees, agents or subcontractors is responsible for the personal injury, illness, disease, death or loss or damage.

D5 Payments under indemnities

- .1 Any amount a **party* must pay the other **party* under the indemnities in **clause D2 and D4** is:
 - a reduced by any **input tax credit* directly obtained or obtainable by the **party* to be paid and
 - b increased by **GST* the **party* to be paid has paid or will pay on that indemnity, reimbursement, contribution or damages.

E Insurance

E1 Public liability insurance and contract works insurance

- .1 From the time the contractor is given possession of the **site* until 4.00pm on the day the architect issues the final certificate to the contractor and to the owner, the contractor must take out and maintain appropriate insurance naming the contractor, its subcontractors and the owner as insureds, against:
 - a the risks referred to in **clauses D1.2 and D1.3** and
 - b the risks referred to in **clause D1.4**.

E2 Insurance cover

- .1 The insurance against loss of or damage to the items referred to in **clause E1.1b** must cover:
 - a the full reinstatement or replacement cost of the insured items
 - b 15% of the **contract price* for consultants' fees including the architect's fees, relating to the reinstatement or replacement
 - c 10% of the **contract price* for any necessary demolition and removal of debris and

- d all **GST* associated with reinstatement and replacement of the **works*.

- .2 The insurance against liability for injury, illness, disease or death must be at least for \$20 million.

E3 Workers compensation and employer's liability insurances

- .1 The contractor must maintain workers compensation or employer's liability insurance in accordance with the statutory scheme that applies under this contract and ensure that each of its subcontractors does so.

E4 Payment of excess

- .1 The **party* making a claim under an insurance policy arranged under **clause E1.1 or E3** must pay the excess and may recover the excess in proportion to the extent of the other **party's* negligence or breach contributed to the injury, loss or damage.

F The site

F1 Owner to give contractor possession of the **site*

- .1 The owner must give the contractor possession of the **site* within 10 **working days* after
 - a the owner is given a copy of this contract executed by both **parties* and
 - b the owner is satisfied that the contractor has obtained all of the insurances required under **section E**.

F2 Contractor's obligations in relation to the **site*

- .1 The contractor must:
 - a give the owner, the architect, separate contractors, consultants and, if applicable, a representative of the owner's lending institution, access on reasonable terms to the **site* and all other places at which **necessary work* is carried out in relation to the **works* by or on behalf of the contractor, after being given reasonable notice and
 - b keep the **site* and any area affected by the **works* clean and tidy at all times.

F3 Owner warrants that it has given contractor the **site information*

- .1 The owner warrants that it has given the contractor all the **site information* in its possession at least 5 **working days* before the closing of tenders.
- .2 **site information* includes any reports, surveys, test results, plans, specifications, computations or other information such as foundations data, soils tests or geotechnical tests.

F4 Contractor to examine the **site information*

- .1 Before executing this contract, the contractor must have examined the **site information* and have inspected the **site* and its surroundings and, having done so, is entitled to rely on the **site information* to the extent that it is reasonable to do so, having regard to the nature of the **site* and its surroundings.

F5 If contractor discovers a **latent condition*

- .1 The contractor must notify the architect in writing and seek instructions within 5 **working days* if the contractor discovers a **latent condition* affecting the **site* which the contractor considers may result in it incurring loss, expense or damage, or may affect its ability to bring the **works* to **practical completion* by the date for **practical completion* as adjusted.
- .2 A **latent condition* is a physical condition on, underlying or adjacent to the **site* which a competent contractor would not have anticipated if the contractor had examined the **site information* and inspected the **site* before executing this contract.

F6 Architect to instruct in relation to a **latent condition*

- .1 The architect must **promptly* give the contractor a written instruction regarding a **latent condition*.

F7 Contractor entitled to claim for **latent condition*

- .1 The contractor is entitled to make a **claim to adjust the contract* in relation to a written instruction given by the architect regarding the discovery of a **latent condition*, by following the procedures stated in **section H**.

G Building the works**G1 Owner's obligations**

- .1 The owner must give the contractor the necessary information to allow the contractor to properly set out the **works*, including sufficient information to locate a reference set-out mark.

G2 Subcontracting

- .1 The contractor may subcontract any part of the **works*, but not the **works* as a whole.
- .2 The contractor is liable for:
 - a the **necessary work* done by its subcontractors and
 - b any acts and omissions of its suppliers and subcontractors in relation to the **works*.
- .3 The relevant provisions of this contract must be included in contracts the contractor makes with its suppliers or subcontractors. The contractor must fully inform all potential suppliers or subcontractors of the contractor's relevant obligations under this contract.

H Claims to adjust the contract**H1 Time for making a **claim to adjust the contract***

- .1 The contractor is entitled to make a **claim to adjust the contract* only if the contractor:
 - a **promptly* notifies the architect in writing of its intention to make a claim after receiving an instruction or, if no instruction is issued, **promptly* notifies the architect after becoming aware of an event that will result in a claim and
 - b submits the detailed **claim to adjust the contract* to the architect within a time agreed in writing between the contractor and the architect or, if no time is agreed, within 15 **working days* after receiving an instruction or, if no instruction is issued, within 15 **working days* after becoming aware of the event that has resulted in the claim and, for these purposes, an event is not a consequence of an instruction.
- .2 If the claim results from a delay in the progress of the **works*, the contractor is not required to give the first notification required under **clause H1.1**, but the detailed claim must be submitted within 15 **working days* after the delay ends.

H2 Details required for claim

- .1 When submitting a **claim to adjust the contract* the contractor must provide the following details:
 - a identification of the architect's instruction that caused the claim or, if none has been issued, details of the event and the basis for the claim
 - b a breakdown of the costs or savings, on a trade by trade basis, using the **charge-out rates* in **item 13a** of **schedule 1**
 - c a breakdown of the cost or savings to the contractor of materials and preliminaries, including the allowance for contractor's overheads and profit at the rate shown in **item 13b** of **schedule 1**
 - d any reasonable detail to support the claim requested by the architect
 - e any required adjustment to the date for **practical completion*.

H3 Architect to assess claim

- .1 The architect must **promptly* assess the **claim to adjust the contract* and issue to the contractor and to the owner its written decision specifying any adjustment to the **contract price* or any adjustment to the date for **practical completion*, or both.

- .2 The contractor may dispute the architect's decision issued under this clause in accordance with **clause A6** but, in accordance with **clause P1**, must continue to perform its contractual obligations.

I Not used**J Variation to the works****J1 Architect may instruct **variations***

- .1 The architect may give to the contractor a written instruction for a **variation* at any time before the date of **practical completion*.
- .2 The instruction for a **variation* may include an instruction to provide within 10 **working days*, or longer period if stated in the instruction, one or more of the following:
 - a a detailed estimate of the whole, or any part, of the cost of, or any saving, as a result of the **variation*
 - b an estimate of the effect of the **variation* on the date for **practical completion*
 - c a detailed quotation for the whole of the cost of the **variation* or part of a **variation* and the effect on the date for **practical completion*.
- .3 The contractor may request an instruction from the architect if it considers that a **variation* may be required. A request by the contractor under this clause must be in writing.
- .4 A **variation* is a change to:
 - a the scope of the **works* as contemplated by the **contract documents* and capable of being executed under this contract
 - b a dimension or level of the **works*
 - c the materials, workmanship or quality of any part of the **works*
 - d a detail of the **works* or
 - e the order of precedence of the **contract documents* referred to in **clause B2**.
- .5 If the contractor receives an **official document* which requires a **variation*, the procedures in **clauses J4** to **J5** apply.

J2 Contractor to review instruction

- .1 The contractor must review a written instruction issued by the architect under **clause J1**.
- .2 If the instruction for a **variation* will not:
 - a result in an adjustment to the **contract price* or
 - b require an adjustment to the date for **practical completion*
 then the contractor:
 - c must carry out the instruction **promptly*
 - d is not required to obtain an instruction to proceed, and
 - e is not entitled to any adjustment to the contract for carrying out the instruction.
- .3 If the instruction will:
 - a result in an adjustment to the **contract price* or
 - b require an adjustment to the date for **practical completion*
 or both, the contractor must:
 - c notify the architect **promptly* in writing, unless it has received an instruction under **clause J1.2** to provide information and
 - d continue to carry out the **works* in accordance with the **contract documents* until a further instruction is received under **clause J3**.
- .4 If the architect instructs the contractor under **clause J1.2**, then within 10 **working days* the contractor must give the architect the information requested.

J3 Architect to instruct whether **variation* is to proceed

- 1 Within 5 **working days* after receiving the requested information under **clause J1.2** or the contractor's notification in accordance with **clause J2.3**, the architect must:
 - a instruct the contractor in writing that the **variation* will not proceed or
 - b issue a further instruction to the contractor to proceed with the **variation*, nominating any quotation or estimate that is accepted.
- 2 If the architect instructs the contractor to proceed with the **variation*, the contractor must do so **promptly*.

J4 If **authorised person* issues **official document*

- 1 If an **authorised person* issues an **official document* to the contractor which requires a **variation*, the contractor must notify the architect in writing **promptly* after receiving the **official document*. The notification must request an instruction from the architect and provide a copy of the **official document* to the architect.
- 2 If the architect receives an **official document* from the contractor under **clause J4.1**, the architect must **promptly* issue a written instruction to the contractor regarding the **official document*.
- 3 The architect's instruction must be an instruction in accordance with **clause J1.2**.

J5 Contractor entitled to make claim for **official document*

- 1 The contractor is only entitled to make a **claim to adjust the contract* for any loss, expense or damage that results from a written instruction issued under **clause J4.1** if the circumstances giving rise to the **official document* being issued were beyond the contractor's control.
- 2 The requirements for making a **claim to adjust the contract* and the procedures to be followed are stated in **section H**.

K Adjustment of provisional and prime cost sums**K1 **Provisional* and **prime cost sums* included in contract**

- 1 A **provisional sum* shown in **item 11** of **schedule 1** is a sum exclusive of **GST* included in the contract for:
 - a performance of foreseeable **necessary work*, including the supply of materials, not fully described by the **contract documents* on the date that this contract was executed.
 - b connection of an **infrastructure service* to the **site*, if the detail of the **infrastructure service* required, and/or the supplier of the **infrastructure service*, was not known or had not been finally decided on the date that this contract was executed.
- 2 A **prime cost sum* shown in **item 12** of **schedule 1** is a sum exclusive of **GST* included in the contract for:
 - a a foreseeable item of material or equipment, the precise identity of which was not known or had not been specified at the date of the contract or,
 - b an allowance for payment of a fee or charge to a **relevant authority*.
- 3 The contractor agrees that it has made adequate allowance in the **cost of building work* for the scheduled **provisional sums* and **prime cost sums* including, but not limited to, its preliminaries, overhead and profit.
- 4 The contractor agrees that the estimated date for **practical completion* contains an adequate allowance of time for any work to be performed under any **provisional sum* or **prime cost sum* to the extent that the work was reasonably described in the **contract documents* at the time that the contract was executed.

K2 Architect may instruct regarding **provisional* or **prime cost sum*

- 1 Subject to **clause K2.6**, nothing is to be done for which a **provisional sum* or a **prime cost sum* has been included in the contract except in accordance with an instruction from the architect.

- 2 The architect may instruct the contractor to provide a written quotation for anything for which a **provisional sum* or a **prime cost sum* has been included in the contract.
- 3 The quotation must be for:
 - a the direct cost to the contractor of performing the **necessary work*
 - b connection of an **infrastructure service*
 - c supplying, or supplying and installing an item of material or equipment or
 - d the amount of a fee or charge to a **relevant authority*, excluding any margins for preliminaries, overheads, profit or **GST*.
- 4 Except in relation to payment of a fee or charge to a **relevant authority*, if the architect agrees with the quotation, the architect must issue an instruction to proceed and the **cost of building work* will be adjusted in accordance with **clause K3** when the next certificate is issued.
- 5 Except in relation to payment of a fee or charge to a **relevant authority*, if the architect:
 - a does not agree with the quotation or
 - b has not instructed the contractor to provide a quotation the architect may instruct the contractor to proceed, in which case the architect must issue a decision in accordance with **clause H3**.
- 6 The contractor may pay a fee or charge to a **relevant authority* for which a **prime cost sum* has been included in the **cost of building work* without first receiving an instruction from the architect.

K3 Adjustment for **provisional* or **prime cost sum*

- 1 Following receipt of the contractor's claim, the architect must adjust the **cost of building work* to take account of any difference between a **provisional sum* or **prime cost sum* and:
 - a the accepted quotation;
 - b the architect's assessment of a claim under **subclause K2.5**; or
 - c the amount of a fee or charge to a **relevant authority*, as applicable. The architect must adjust the **cost of building work* in the next progress certificate.
- 2 If the assessed cost of performance of the **necessary work*, connection of an **infrastructure service*, or supply, or supply and installation is:
 - a more than the **provisional sum* or **prime cost sum*, the extra cost will be added to the **cost of building work*.
 - b less than the **provisional sum* or **prime cost sum*, the difference will be deducted from the **cost of building work*.
- 3 In relation to a fee or charge paid to a **relevant authority*, the architect must adjust the **cost of building work* by deducting, or adding, the net difference between the **prime cost sum* and the actual fee or charge.

L Adjustment of time**L1 Causes of delay which entitle making a claim for adjustment of time with costs**

- 1 The contractor may make a claim for an adjustment to the date for **practical completion* and **adjustment of time costs* in respect of a delay affecting **working days* caused by an act or omission of the owner.
- 2 The contractor must take all reasonable steps to minimise the impact of the delay on the progress of the **works*.
- 3 A claim to adjust the date for **practical completion* with or without **adjustment of time costs* is a **claim to adjust the contract*.
- 4 The requirements for making a **claim to adjust the contract* under this **clause L1** and **clause L3.1** and the procedures to be followed are stated in **section H**.

L2 Contractor to allow for delays

- .1 The contractor warrants that the number of days it allowed in **item 7 of schedule 1** to bring the **works* to **practical completion*, includes a reasonable allowance for:
 - a **working days* reasonably allowed given the nature of the **works*
 - b **non-working days*
 - c disruptive weather conditions on **working days*.

L3 Causes of delay which entitle making claim for adjustment of time without costs

- .1 The contractor may make a claim for an adjustment to the date for **practical completion*, but not for **adjustment of time costs*, caused by:
 - a **working days* reasonably allowed given the nature of the **works*
 - b **non-working days*
 - c disruptive weather conditions on **working days*, exceeding the allowance shown in **item 7 of schedule 1**.

M Completion of the works**M1 Practical completion**

- .1 The contractor must bring the **works* to **practical completion* by the date for **practical completion* shown in **item 8 of schedule 1** as adjusted in accordance with this contract. The **works* are at **practical completion* when, in the reasonable opinion of the architect:
 - a they are substantially complete and any incomplete work or **defects* remaining in the **works* are of a minor nature and number, the completion or rectification of which is not practicable at that time and will not unreasonably affect occupation and use and
 - b all approvals required for occupation have been obtained from the **relevant authorities* and copies of **official documents* evidencing the approvals have been provided to the architect.
- .2 When the contractor considers that the **works* are at **practical completion*, the contractor must notify the architect in writing and give a copy of the detailed schedule of **defects* and incomplete work to the architect indicating that each item has been corrected or completed to the satisfaction of the contractor.
- .3 The architect and the contractor must, within 5 **working days* after the contractor's notice under **clause M1.2**, meet on the **site* at a mutually convenient time and undertake a joint inspection of the **works* and examine them for **defects* and incomplete work.
- .4 If, after the joint inspection in **clause M1.3**, the architect decides that the **works* have not reached **practical completion*, the architect will prepare a further schedule of **defects* and incomplete work and give a copy to the contractor and to the owner. This schedule is a written instruction from the architect for the purposes of **clause M4**.
- .5 If, after the joint inspection in **clause M1.3**, the architect decides that the **works* have reached **practical completion*, the architect must issue to the contractor and to the owner a notice of **practical completion* within 2 **working days* after completing the inspection. The notice must state the date when **practical completion* was reached.
- .6 Subject to **clause M4**, the owner takes possession of the **works* at 4.00pm on the date the architect issues the notice of **practical completion*.
- .7 On the day after the notice of **practical completion* is issued, the contractor ceases to have possession of the **site* except by prior arrangement with the owner or the architect.

M2 Possession of the **works* before **practical completion*

- .1 If the owner takes possession of the whole of the **works* before the architect issues the notice of **practical completion*, the whole of the **works* are to be treated as having reached **practical completion*.

- .2 The architect must issue to the contractor and to the owner a notice of **practical completion* for the **works* within two **working days* after being notified in writing that the owner has taken possession.

M3 Liquidated damages may be payable

- .1 If the **works* have not reached **practical completion* by the date for **practical completion* as adjusted, the contractor is liable to pay or allow to the owner liquidated damages at the rate shown in **item 9 of schedule 1**.
- .2 The architect must deduct liquidated damages from the next and subsequent progress certificates, as applicable.
- .3 If, after the architect has issued a certificate in which an allowance for the owner's entitlement to liquidated damages has been made, an adjustment is made to the date for **practical completion*, with the result that the owner's entitlement to liquidated damages is altered, or the owner has advised that it no longer wishes to enforce its entitlement to liquidated damages, the architect must make an appropriate adjustment in the next certificate.

M4 Contractor to correct **defects* and finalise work

- .1 Subject to **clause M1.7**, the contractor must correct all **defects* or finalise any incomplete work, whether before or after the date of **practical completion*, within 10 **working days* after receiving a written instruction from the architect to do so.

M5 Defects liability period

- .1 The defects liability period is 180 days and commences on the date of **practical completion* of the **works*.

M6 Contractor's obligations during and after defects liability period

- .1 If the architect notifies the contractor that there is any remaining **defects* or incomplete work, the contractor must, subject to **clause M1.7**, **promptly* return to the **site* and correct the **defects* or finalise the incomplete work. This obligation continues until the **defects* are corrected or the incomplete work is finalised, and does not come to an end when the defects liability period is over.

N Payment for the works**N1 Contract price**

- .1 The **contract price*, shown in **item 4 of schedule 1** is a lump sum and allows for:
 - a everything reasonably required to complete the **works*
 - b all **provisional sums* and **prime cost sums* shown in **items 11 and 12 of schedule 1**
 - c installation of any items to be supplied by the owner and installed by the contractor
 - d all statutory taxes and charges including **GST*.

N2 Owner's obligation to pay **contract price*

- .1 The owner must pay the contractor the **contract price*, adjusted in accordance with this contract, progressively in accordance with certificates issued by the architect.

N3 Progress claims – procedure for contractor

- .1 The contractor may submit one claim at each of the stages for progress claims stated in **item 10 of schedule 1**.
- .2 The claim must be for the contractor's valuation of **necessary work* completed since the date of possession of the **site* (for the first claim) or since the previous claim (for all subsequent claims). The valuation of **necessary work* in each progress claim must not be greater than the percentage of the **contract price* stated in **item 10 of schedule 1** applicable to that stage.
- .3 The claim must set out the total amount claimed to be payable under the contract as adjusted at the completion of the relevant stage, stating the amount of **GST* included in the claim.

N4 Contractor's right to final claim

- .1 The contractor is entitled to claim for the final payment when the defects liability period has ended and the contractor has rectified all **defects* and finalised all incomplete work.
- .2 After the final claim has been paid, the contractor is not entitled to make any further claims under this contract.

N5 Progress claims – procedure for architect

- .1 The architect must assess the contractor's claim for payment and issue a certificate setting out any payment due within 10 **working days* after receiving the claim. The architect must take account of:
 - a the percentage of the **contract price* as adjusted payable at the completion of the relevant stage, making allowance for the cost of rectifying **defects*
 - b an allowance for cash retention
 - c any claim for a set-off of monies due under this contract
 - d the owner's entitlement to liquidated damages, in accordance with **clause M3**, since any previous certificate, calculated up to the date of the certificate
 - e any other matter or adjustment to be taken into account in accordance with this contract
 - f **GST*.
- .2 In addition to the items in **clause N5.1**, the final certificate must show an account of:
 - a any claim for a set-off of moneys due
 - b the remaining security by cash retention
 - c **GST*.
- .3 The architect must give written reasons for any difference between the (**GST* exclusive) amount certified and the (**GST* exclusive) amount claimed.

N6 *Tax invoice

- .1 On receiving a certificate from the architect, the **party* to be paid must deliver the certificate to the other **party* for payment. If the **party* to be paid is registered for **GST*, it must, at the same time, deliver a **tax invoice* equal in value to the certificate to the other **party*.

N7 Certificates – obligation to pay

- .1 Before the owner is obliged to pay the amount stated as owing on the first certificate, the insurances to be taken out by the contractor under Section E must be in place.
- .2 Subject to **clause N7.1**, the amount stated as owing in any certificate must be paid within 5 **working days* after delivery of the certificate and the **tax invoice* (if applicable).

N8 Effect of final certificate

- .1 The final certificate is evidence of the parties' entitlements under this contract and that the contractor has performed its obligations under this contract, subject to any matter already in dispute under **section P**.

O Not used**P Dispute resolution****P1 Each party must continue to perform its obligations**

- .1 If a dispute or difference arises out of or in relation to this contract, the parties must continue to perform their obligations under this contract.

P2 Compulsory conference

- .1 If a dispute or difference between the **parties* arises out of or in relation to this contract:
 - a either **party* may deliver a written dispute notice to the other which requires the parties to meet within 5 **working days* after the dispute notice is delivered to make a bona fide attempt to resolve the dispute or difference.
- .2 If the dispute or difference is not resolved within 10 **working days* after the dispute notice is delivered, the parties may agree in writing to proceed to mediation in accordance with **clause P3**.

- b If the dispute or difference is not resolved, and the parties have not agreed in writing to proceed to mediation in accordance with **clause P3**, either party may begin legal proceedings in accordance with the **relevant legislation*.

P3 Mediation

- .1 Any mediation agreed in writing under **clause P2.2** is to be conducted:
 - a by a mediator agreed in writing within a further 10 **working days* or, if not, the **party* that issued the dispute notice must request in writing, copied to the other **party*, that the chairperson of the relevant Chapter of the Resolution Institute nominate the mediator; and
 - b in accordance with the Rules for Mediation of the Resolution Institute.
- .2 The mediation must commence within 10 **working days* after agreement or appointment of the mediator under **clause P3.1a**, unless the parties agree in writing to a longer period.
- .3 If the mediation has failed to resolve the dispute or difference when the mediator confirms the mediation is concluded, either **party* may begin any legal proceedings available to it.

Q Termination of engagement**Q1 Owner may require contractor to remedy default**

- .1 If the contractor fails to meet a substantial obligation under this contract, the owner may give the contractor a written notice requiring the contractor to remedy the default within 10 **working days*.
- .2 If within 10 **working days* the contractor fails to rectify the default, or fails to show reasonable cause why it cannot be remedied, the owner may terminate the contractor's engagement under this contract by giving the contractor a written notice of termination.
- .3 If an **insolvency event* occurs in relation to the contractor, the owner may immediately terminate the engagement of the contractor under this contract by giving the contractor a written notice of termination.
- .4 The written notice of termination delivered by the owner must state that it is a notice of termination of the contract given under **clause Q1.2** or **Q1.3**, as the case may be and a copy must be given to the architect.

Q2 Owner may take possession of the *site

- .1 If the owner terminates the engagement of the contractor before **practical completion*, the owner may exclude the contractor from the **site*.
- .2 The owner may take possession of any documents, unused materials and equipment on the **site* intended for incorporation into the **works*, belonging to the contractor, and may use them in completing the **works*.
- .3 At any time, the architect may instruct the contractor to remove any of its property listed in the instruction and the owner must allow the contractor access to do so on reasonable terms.

Q3 Assignment of contractor's rights

- .1 If the engagement of the contractor has been terminated, the contractor must assign to the owner any or all of its rights under any subcontract relating to the supply of labour, services, materials or equipment for the **works* as directed by the architect.

Q4 Owner not bound to make any further payment to contractor

- .1 If the engagement of the contractor has been terminated, the owner will not be bound to make any further payment to the contractor unless an obligation to pay arises under **clause Q5**.

Q5 Architect to give assessment of cost of completing the *works and issue certificate

- .1 If the engagement of the contractor has been terminated, the architect must **promptly* make a written assessment of the cost to the owner of completing the **works* and issue it to the contractor and to the owner.
- .2 The architect must then **promptly* prepare and issue to each party a certificate as to the amount payable, including **GST*, by one **party* to the other taking account of:
 - a the value of the **necessary work* completed, as assessed in the last certificate
 - b the assessment under **clause Q5.1**
 - c the architect's assessment of any claim by the owner under this contract for a set off of monies due and
 - d any liquidated damages under **clause M3**, due since the last certificate,
 then subtracting the total of them from the **contract price* as adjusted at the time of termination and adding to that total, any remaining security.
- .3 A certificate issued under this clause takes the place of a final certificate under **clause N5**.

Q6 Contractor's rights if default not remedied

- .1 If the owner defaults by:
 - a failing to pay a progress claim on time; or
 - b failing to meet any other substantial obligation under this contract,
 the contractor may give the owner a written notice (and a copy must be given to the architect) requiring the owner to rectify the default within 10 **working days*.
- .2 If within 10 **working days* the owner fails to rectify the default, or to show reasonable cause why it cannot be rectified, the contractor may terminate its engagement by giving the owner written notice of termination.
- .3 If an **insolvency event* occurs in relation to the owner, the contractor may immediately terminate its engagement under this contract by giving the owner written notice.
- .4 The written notice of termination delivered by the contractor must state that it is a written notice of termination of the contract given under **clause Q6.2** or **Q6.3**, as the case may be, and a copy of which must be given to the architect.
- .5 The contractor must **promptly* submit to the architect a claim setting out the contractor's entitlement, calculated on the same basis as if the owner had wrongfully repudiated (cancelled) the contract.

Q7 Architect to give certificate

- .1 The architect must **promptly* assess any claim made by the contractor under **clause Q6** and must **promptly* issue to the contractor and to the owner a certificate specifying the amount for payment to the contractor or the owner, as the case may be.
- .2 If a certificate is issued under this clause, it takes the place of a final certificate under **clause N5**.

R Miscellaneous**R1 Transmission of documents**

- .1 A **party* or the architect may only deliver a document under this contract to the other **party* or the architect by:
 - a delivering it to the **party* or the **party's* representative or the architect by hand or mail at the address shown in **item 1 of schedule 1**
 - b faxing it to the **party* or the architect at the fax number shown in **item 1 of schedule 1** or
 - c emailing it to the **party* or the architect or attaching an electronic copy to the email. However, email may only be used to deliver a document if the receiving **party* or the architect has given an email address in **item 1 of schedule 1**, or the **party* or the architect has confirmed in writing that email communication to the **party* or the architect is acceptable for use under this contract.

- .2 If the fax numbers, or email addresses of the **party* and the **party's* representative are different, the document must be sent to both the **party's* address and the address of the **party's* representative.
- .3 If a **party* or the architect has had 5 **working days* written notice from another **party* or the architect of a change of postal address, email address, or fax number, a document may then only be delivered to that **party* or the architect at the latest address, email address or fax number.

R2 Time document is received

- .1 A document that is sent by mail is to be treated as having been received 3 **working days* (7 **working days* in the case of overseas mail) after posting.
- .2 If:
 - a a document is delivered by fax, or an error-free transmission report is received after 5.00pm in the time zone of the **site*;
 - b a return email is received after 5.00pm;
 the fax document or email (as appropriate) is to be treated as having been received at the beginning of the next **working day*.

R3 Assignment

- .1 Neither **party* may assign any rights under this contract without obtaining the other's consent. That consent may not be unreasonably withheld.

R4 Entire contract

- .1 This contract contains everything the **parties* have agreed in relation to the matters it deals with and takes precedence over any earlier written or oral agreement between, or anything said or done by, the parties (or an officer, agent, employee of either party).

R5 Interpretation

- .1 The headings in this contract are used as a guide only and do not form part of it.
- .2 A reference to the singular includes the plural and the plural includes the singular.
- .3 No rule of construction will apply to the disadvantage of one **party* on the basis that that **party* has put forward the contract documents or any of them.
- .4 This contract is governed by the law of the State or Territory in which the **works* are carried out.

S Definitions**S1 The following terms have the following meanings.**

- .1 *adjustment of time costs* includes any loss, expense, or damage reasonably incurred by the contractor that results from a delay due to the causes referred to in **clause L1.1**
- .2 *authorised person* is a building inspector or certifier or other person authorised under **relevant legislation* having jurisdiction over the **works*
- .3 *building code* means Volumes One and Two of the National Construction Code as in force as at the date of commencement of the **works*
- .4 **charge-out rate* means the dollar amount (not including **GST*) expressed as an hourly rate, that represents the total of the contractor's:
 - (a) cost of labour including labour on-costs,
 - (b) allowance for business overheads, and
 - (c) margin for profit
- .5 *claim to adjust the contract* is a claim made to the architect to adjust the **contract price* or the date for **practical completion* or both
- .6 *contract documents* are any special conditions shown in **schedule 2**, the conditions of this contract, the specifications, the drawings and any other documents shown in **item 5 of schedule 1**
- .7 *contract price* - see **clause N1.1**

- .8 *cost of building work* is the actual net cost of the **works* excluding any amounts for **GST*
- .9 *defect or defective work* is work that is:
- a in breach of any of the warranties set out in the **contract documents*
 - b not in accordance with the standard or quality of building work specified in the **contract documents*
- .10 *GST* means goods and services tax levied under the **GST Act*
- .11 *GST Act* means the *A New Tax System (Goods and Services Tax) Act 1999*
- .12 *infrastructure service* is a service to the **site* for which there is an alternative source of supplier, or supply
- .13 *input tax credit* has the same meaning as 'input tax credit' under the **GST Act*
- .14 *insolvency event* in relation to a person, means anything that indicates that the person is or will become unable to pay their debts as and when they become due or payable including:
- a the person is declared, made or becomes insolvent
 - b an execution or distress process is levied against the person's assets which include the person's income
 - c the person enters into a deed of company arrangement with the person's creditors
 - d the person fails to comply with a bankruptcy notice or a statutory demand served under the corporations law
 - e a provisional liquidator, liquidator, receiver, receiver and manager, administrator, scheme administrator, controller or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets
 - f a trustee in bankruptcy, interim receiver, controlling trustee or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets.
- .15 *latent condition* - see **clause F5.2**
- .16 *necessary work* is all work including any temporary work necessary to complete the **works*
- .17 *non-working days* are statutory public holidays and rostered days off and recognised industry shut-down periods in the State or Territory in which the **works* are being carried out
- .18 *official document* - see **clause B3.4**
- .19 *owner-specified materials* - means all items, materials, fixtures and fittings sourced or supplied and requested by the owner to be incorporated into the **works*
- .20 *party or parties* means the owner or the contractor or both as the case may be
- .21 *practical completion* - see **clause M1.1**
- .22 *prime cost sum* - see **clause K1.2**
- .23 *promptly* means as soon as practicable
- .24 *provisional sum* - see **clause K1.1**
- .25 *relevant authority* is a body or organisation, statutory or otherwise, which has authority over the **works* in accordance with **relevant legislation*, including an **infrastructure service* supplier exclusively able to supply the **site*
- .26 *relevant legislation* is Acts, regulations, **official documents* and official interpretations of them that have a direct relationship to the work being carried out by an authority having jurisdiction of the **works*
- .27 *site* is the place at which the **works* are to be constructed and any other place made available by the owner to the contractor under this contract (described in **item 6 of schedule 1**)
- .28 *site information* - see **clause F3.2**
- .29 *tax invoice* is an invoice for payment complying with the requirements of the **GST Act*
- .30 *variation* - see **clause J1.4**
- .31 *working day* is Monday to Friday excluding **non-working days*
- .32 *works* - see **item 5 of schedule 1**.