

# MAJOR WORKS CONTRACT

AUSTRALIAN  
BUILDING  
INDUSTRY  
CONTRACT



Australian  
Institute of  
Architects



MASTER BUILDERS  
AUSTRALIA

ABIC MW 2018 H Vic

Major Works Contract for Housing  
in Victoria

Contract Price: \$ \_\_\_\_\_

Owner: \_\_\_\_\_

Contractor: \_\_\_\_\_

Site: \_\_\_\_\_

Notices pursuant to Section 31(n) of the *Domestic Building Contracts Act 1995*

## Cooling-off period

**Notice to Owner: You may end this contract within five (5) clear business days after receipt by you of a signed copy of the contract by filling in the notice below and giving it to the contractor in one of the following ways:**

- a personally**
- b leaving it at the address of the contractor set out in item 1 of schedule 1 of the contract with a person who appears to be at least 16 years old**
- c sending it by pre-paid certified mail to the address set out in item 1 of schedule 1 of this contract**
- d sending it by facsimile to the facsimile number (if any) set out in item 1 of schedule 1 of this contract.**

.....  
Detach along dotted line

## Notice that contract is ended

**The owner cannot withdraw from this contract under the Act if:**

- a the contractor and the owner have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of the work in relation to the same home or land as this contract; OR**
- b the owner received independent legal advice from a practising solicitor concerning the contract before entering into the contract**

To \_\_\_\_\_ (contractor)

I/We \_\_\_\_\_ give notice under our contract with you that the contract is ended. Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I have previously approved.

**Owner's signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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## Checklist

Domestic Building Contracts Act 1995 Section 31(1)(r)

**Before Signing this Legally Binding Contract Check this List:**

1. If the cost of the building work is more than \$16,000, has a *\*warranty insurance* policy or certificate of currency for builder's *\*warranty insurance* covering your project been issued and provided to you? YES or NO  
(Note: If not, the contract is conditional upon you receiving either a *\*warranty insurance* policy or a certificate of currency for builder's *\*warranty insurance*.)
2. If this contract is conditional upon you receiving written approval for finance, have you obtained such approval? YES or NO
3. Have you appointed a private building surveyor or has a municipal building surveyor been engaged? YES or NO  
**NOTE:** If not, you will need to choose and engage a building surveyor before your building work starts so that a building permit can be issued for your work.

**If you answer 'NO' to any of the following questions that apply to your building project, you are not ready to sign the contract:**

4. Have you had this contract long enough to read and understand it? YES or NO
5. Have you been provided with evidence that the contractor named in this contract is registered with the Victorian Building Authority? YES or NO
6. Are the price and progress payments clearly stated? YES or NO
7. Do you understand how the price is calculated and may be varied? YES or NO
8. Has the contractor assessed the suitability of the site for the proposed works? YES or NO  
If tests are necessary, have they been carried out?
9. If a deposit is payable, is it within the legal limit? YES or NO  
The maximum under the *Domestic Building Contracts Act 1995* is:  
(i) 10% if the price is less than \$20,000 or  
(ii) 5% if the price is \$20,000 or more.
10. Is the work shown and described clearly in the contract, plans or specifications and any other relevant documents (such as engineering computations or soil report)? YES or NO
11. Are your special requirements or standards of finish included in the plans and specifications? YES or NO
12. Are the commencement date and completion date clearly stated or capable of being worked out? YES or NO
13. Do you understand the procedure for extensions of time? YES or NO
14. Are any 'provisional sums' or 'prime cost items' clearly stated in the schedules and understood by you? YES or NO
15. Do you understand the procedure for variations of plans and specifications? YES or NO
16. Do you understand the circumstances in which you can end the contract? YES or NO
17. Did your contractor give you a copy of the Domestic Building Consumer Guide? YES or NO  
If yes, insert the date on which you were given a copy of this guide: \_\_\_\_/\_\_\_\_/20\_\_\_\_
18. Have you read the Domestic Building Consumer Guide and the related information at [consumer.vic.gov.au/building\\_guide](http://consumer.vic.gov.au/building_guide)? YES or NO

\_\_\_\_\_  
Read, dated and signed by the owner(s)

Date: \_\_\_\_/\_\_\_\_/20\_\_\_\_

**NOTE:** This checklist does not form part of the contract.

**NOTE:** Not all of these questions will apply to a domestic building contract that covers a limited scope of work, for example, a contract that is limited to the preparation of building plans and specifications.

# Form 1

## Form 1

Domestic Building Contracts Regulations 2017

Regulation 13(1)(a)

### Warning to owner – Change of legal rights

Under section 40 of the *Domestic Building Contracts Act 1995* (**the Act**) a contractor cannot, under a major domestic building contract, charge more than a fixed percentage of the total contract price at the completion of each stage of building a home.

The Act also allows the parties to a major domestic building contract to agree in writing to change the stages and the percentage of the contract price to be paid at the completion of each stage.

There are several ways in which a particular major domestic building contract can vary from the normal, and which might mean that different stages and percentages to those fixed in section 40 of the Act are appropriate for that contract. These are exceptional cases. Some examples of these cases may include:

- where it is very expensive to prepare the land for building for example, where the site is steep or rocky;
- where the home is so large that it will take a long time to complete, and intermediate progress payments are therefore required;
- where exceptionally expensive finishes are required, meaning that the final stage will represent a much larger proportion of the whole price;
- where significant work is required on a later stage of the contract before an earlier stage can be fully completed;
- where an architect is engaged to independently assess the value of completed work for progress payments.

You should not agree to progress payments that differ from those set out in section 40 of the Act unless your home is unusual in some way and you are **SURE THAT DIFFERENT PROGRESS PAYMENTS ARE NECESSARY** and you understand clearly why the change is needed in the case of your particular home.

If you have any doubts, you could contact:

- Consumer Affairs Victoria; or
- Law Institute of Victoria; or
- The Royal Australian Institute of Architects.

**I acknowledge that I have read this warning before signing the contract.**

Signature of owner(s) \_\_\_\_\_

Date \_\_\_\_\_

## Contract information – Schedule 1

Item 1	The owner	The contractor
Name:		
ABN (if applicable):		
Registration/licence no:		
Representative:		
Address for notices:		
Email:		
Mobile:		
Telephone:		
Facsimile:		
If the <i>*party</i> is an individual, individual trustee, partnership or unincorporated association		
Signed by <i>*party</i> :		
Signed by witness:		
Name of witness:		
Date of signing:		
If the <i>*party</i> is a corporation, corporate trustee or incorporated association		
Common seal of <i>*party</i> : (if applicable)		
Signed by:		
Capacity:	Officer / Director / Secretary	Officer / Director / Secretary
Print name:		
Signed by:		
Capacity:	Officer / Director / Sole Director	Officer / Director / Sole Director
Print name:		
Date of signing:		

## Schedule 1 – Contract information

Item 1  
Clause A5  
If the owner has financed  
the \*works using a  
lending institution

Name of lender: \_\_\_\_\_

Representative: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_

Mobile: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Item 2  
Clause A6  
The architect

Name: \_\_\_\_\_

Registration number \_\_\_\_\_

Representative: \_\_\_\_\_

Address for notices: \_\_\_\_\_

Email: \_\_\_\_\_

Mobile: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Item 3  
Clause B2  
Special conditions

Are there any other special conditions?  
If yes, **schedule 2a** applies.

Yes  
No  
*Strike out whichever doesn't apply*

Will the owner remain in occupation?  
If yes, **schedule 2b** applies.

Yes  
No  
*Strike out whichever doesn't apply*

Signature of owner: \_\_\_\_\_

Signature of contractor: \_\_\_\_\_



# Contract information – Schedule 1

Item 4  
Clause N1

## The *\*contract price*

*\*Cost of building work:* \$ \_\_\_\_\_  
Plus *\*GST* \$ \_\_\_\_\_  
*\*Contract price* \$ \_\_\_\_\_

## Form pursuant to section 33(2)(b) of the *\*Act*

### Price

#### Warning: Changes to the *\*contract price*

The *\*contract price* is not fixed, but may be altered as a result of:

- the actual cost of prime cost items and work for which provisional sums have been specified exceeding the estimates set out in the contract;
- variations including those required by the council/registered building surveyor;
- interest on overdue payments;
- extra costs for delay claimed by the contractor.

Refer to the following clauses:

Clause B2	Order of precedence of documents
Clause E6	Limited right to arrange insurances
Clause F7	<i>*Latent condition</i> or <i>*valuable item</i>
Clause G8	Costs of opening up or testing
Clause G10	Program amendment
Clause G13	Suspension and recommencement
Clause G16	Act or omission of separate contractor
Clause J1	Architect may instruct <i>*variation</i> to the <i>*works</i>
Clause J8	Claim for <i>*official document</i>
Clause K4	Adjustment for <i>*provisional</i> or <i>*prime cost sums</i>
Clause L1	Adjustment of time with costs
Clause M8	Failure to issue notice of <i>*practical completion</i>
Clause M9	Division of <i>*works</i> into separable parts
Clause M11	Possession before <i>*practical completion</i>
Clause N9	If architect fails to issue certificate
Clause N16	Interest on overdue amounts
Clause R10	Change in <i>*relevant legislation</i>

The owner should ensure that if fully understands how these clauses affect the *\*contract price*

#### Warning to the owner as to Prime Cost Items

It is always better to get a fixed price for all work. However, some fixtures and fittings may need to be selected after the contract is signed e.g. a stove, type of taps etc. If these items are specified as prime cost items in **schedule 7** the contractor will allow an amount in the *\*contract price* which should cover the expected cost of the item.

**Note:** If the actual cost is more than the amount allowed, the owner will have to pay the extra amount. The owner will also have to pay the contractor's margin in the extra amount. If this is intended, the margin should be specified, or cannot be claimed unless the owner agrees in writing to such additional amount (see **item 23** of **schedule 1**). If the prime cost is less than that allowed for in the contract, the difference should be deducted from the *\*contract price*.

Signature of owner: \_\_\_\_\_

# Schedule 1 – Contract information

Item 5 Clause A2	The <i>*works</i>	
	Brief description of the <i>*works</i> :	_____
		_____
		_____
		_____
Item 6 Clause F1	The <i>*site</i> of the <i>*works</i>	
	The address/location of the <i>*site</i> :	_____
		_____
Item 7	Security provided by the contractor	
Item 7a Clause C1	Is the contractor to give security to the owner?	<div>Yes</div> <div>No</div> <div>Strike out whichever doesn't apply</div>
Item 7b Clauses C1	Owner's nominated type of security:	<div>Cash Retention</div> <div>Unconditional Guarantee</div> <div>Strike out whichever doesn't apply. If neither selected, cash retention is default</div>
	<i>If no security selected on or before execution of this contract, <b>clause C4</b> applies</i>	
Item 8 Clause C14	Security provided by the owner	
	Is the owner to give security by an <i>*unconditional guarantee</i> to the contractor?	<div>Yes</div> <div>No</div> <div>Strike out whichever doesn't apply</div>
Item 9 Clause C2	Percentage of <i>*contract price</i> for cash retention	<div>_____ %</div> <div><i>If nothing stated, 5%</i></div>
Item 10	Percentage of <i>*contract price</i> for each <i>*unconditional guarantee</i>	
Item 10a	Contractor gives 2 unconditional guarantees each of:	<div>_____ %</div> <div><i>If nothing stated, 2.5%</i></div>
Item 10b	Owner gives 1 unconditional guarantee of:	<div>_____ %</div> <div><i>If nothing stated, 5%</i></div>
Item 11 Clauses C4, C7, C11, N7, N14, N17, Q10, Q18	Period for payment of certificates and for release of security	<div>_____ calendar days</div> <div><i>If nothing stated, 7 calendar days</i></div>
Item 12 Clause E1	Public liability insurance	
	Is the owner or the contractor to take out and maintain public liability insurance?	<div>_____</div> <div><i>If nothing stated, the contractor</i></div>

# Contract information – Schedule 1

Item 13	Contract works insurance	
Clause E2	Is the owner or the contractor to take out and maintain contract works insurance?	<hr/> <i>If nothing stated, the contractor</i>
Item 14	Amount to cover fees of the architect and other consultants	
Clause E5.1		<hr/> <i>If nothing stated, 10% of the *contract price</i>
Item 15	Amount to cover cost of demolition and removal of debris	
Clause E5.1		<hr/> <i>If nothing stated, 10% of the *contract price</i>
Item 16	Amount of insurance for injury, illness, disease or death	
Clause E5.2		<hr/> <i>If nothing stated, \$20,000,000.00</i>
Item 17	Insurance excess	
Clause E10	Clause E1: Amount of excess for public liability insurance:	<hr/> <i>If nothing stated, \$1,000.00</i>
	Clause E2: Amount of excess for contract works insurance:	<hr/> <i>If nothing stated, \$1,000.00</i>
Item 18	Date by which the owner must give possession of the *site	<hr/>
Clause F1		<hr/>
Item 19	Quality assurance system	<hr/>
Clause G2.2		<hr/>
Item 20	Separate work by separate contractors	
Clause G14	Separate contractor:	Separate work:
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
	<hr/>	<hr/>
Item 21	Percentage for the contractor's overheads and profit	<hr/> <i>%</i>
Clause H2		<hr/> <i>If nothing stated, 15%</i>

# Schedule 1 – Contract information

## Item 22 \*Adjustment of time costs

Clause H5

Stage of completion of the *\*works*:

Sum per *\*working day* (incl. *\*GST*):


## Item 23 Percentage of difference to be added to the *\*contract price*

Clause K4.2

%

*If nothing stated, 10%*

## Item 24 Causes of delay which entitle *\*adjustment of time costs* for delays affecting *\*working days*

Clause L1.1m

(causes not listed in clause L1.1 a – 1)


## Item 25 Allowance for delay due to disruptive weather conditions

Clauses L2, L4

*\*working days*

## Item 26 Other allowances for delay having regard to the nature of the contract and the *\*works* which do not entitle *\*adjustment of time costs*

Clauses L2, L4

Cause:

Allowance (*\*working days*):


## Item 27 Date for *\*practical completion*

Clause M1

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# Contract information – Schedule 1

Item 28      Commissioning tests for *\*practical*  
Clause M1      *completion*

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Item 29      Separable parts  
Clause M1

	Description of each separable part	Date for <i>*practical completion</i> of separable part	Defects liability period (weeks) for part	Rate per day of liquidated damages applicable to part
1	<hr/>	<hr/>	<hr/>	<hr/>
2	<hr/>	<hr/>	<hr/>	<hr/>
3	<hr/>	<hr/>	<hr/>	<hr/>
4	<hr/>	<hr/>	<hr/>	<hr/>
5	<hr/>	<hr/>	<hr/>	<hr/>
6	<hr/>	<hr/>	<hr/>	<hr/>

Item 30      Rate for liquidated damages  
Clause M12

\$ \_\_\_\_\_ per calendar day  
(including any *\*GST*)

Item 31      Defects liability period for the  
              *\*works*

Clause M16

\_\_\_\_\_ months  
*If nothing stated, 12 months*

Item 32      Date for submitting progress claims  
Clause N3

\_\_\_\_\_  
*If nothing stated, the 15<sup>th</sup> of the month*

Item 33      Information to be included in a  
Clause N3      progress claim

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# Schedule 1 – Contract information

Item 34	Interest rate on overdue amounts	%
Clause N16		<i>If nothing stated, 10% per annum</i>
Item 35	<b>*Official documents</b> <i>Note: the appointment of a private building surveyor must be made by the owner, but either the contractor or the owner (or its agent) may obtain the building permit as set out in item 35a or item 35b, as the case may be.</i>	
Item 35a	<i>*Official documents</i> required to begin the <i>*works</i> but to be obtained by the contractor: <hr/> <hr/> <hr/> <hr/>	
Item 35b	<i>*Official documents</i> required to complete the <i>*works</i> but to be obtained by the owner: <hr/> <hr/> <hr/> <hr/>	
Item 36	<b>*Non-working days</b> The number of <i>*non-working days</i> allowed in calculating the date for <i>*practical completion</i> shown in item 27 of schedule 1: <div style="text-align: right;"><i>*non-working days</i></div>	
Item 37	<b>*Deposit provided by the owner</b>	
Item 37a	Is the owner to give a <i>*deposit</i> to the contractor?	
Clause N5, N17	Yes	No
	<i>Strike out whichever doesn't apply</i>	
Item 37b	If yes in item 37a, the amount of <i>*deposit</i> is:	
Clauses N5, N17	\$	incl. <i>*GST</i>
	<i>If nothing stated, \$0.00</i>	
	<i>Refer to Information Statement for maximum deposit amounts permitted under the *Act</i>	
	<i>Dollar value must not be more than the maximum percentage in the *Act of the *contract price</i>	

## Special conditions – Schedule 2a

### Special conditions

Item 3 of schedule 1

Clause B2

Blank lined area for special conditions.

REFERENCE COPY

# Schedule 2b – Owner occupier special conditions

## The owner remains in occupation

### Item 3 of schedule 1

These special conditions only apply for projects where the owner will remain in occupation during construction:

#### Replace **clause D1.1** with the following:

Subject to **clause D2**, from the time the contractor is given access to the *\*site* until 4.00pm on the date of *\*practical completion*, the contractor bears the risks described in the following clauses.

#### Replace **clause D3.1** with the following:

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 the following clauses.

#### Replace **clause D6.1** with the following:

Risk in a separable part of the *\*works* passes from the contractor to the owner at 4.00pm on the day the architect issues the notice of *\*practical completion* for that separable part.

#### Replace the first paragraph of **clause E1.1** with the following:

Subject to **clause E3.1**, from the time the contractor is given access to the *\*site* until 4:00pm on the day the architect issues the final certificate to the contractor and to the owner, the party nominated in **item 12** of **schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds, against:

#### Replace **clause E2.1** with the following:

Subject to **clause E3.1**, from the time the contractor is given access to the *\*site* until 4:00pm on the day the architect issues the final certificate for the *\*necessary work* to the contractor and to the owner, the party nominated in **item 13** of **schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds against loss of or damage to the items referred to in **clause D14**.

#### Replace **clause F1** with the following:

- .1 The owner must give the contractor access to the *\*site* from the date shown in **item 18** of **schedule 1**.
- .2 However, the owner is not obliged to give access to the *\*site* until the owner:
  - a has received, or the architect as the agent of the owner has received, a copy of the contract executed by both parties
  - b is satisfied that all the insurances required under **section E** to be provided by the contractor, are in place.

#### Replace **clause M1.2** with the following:

From 4.00pm on the day the architect issues the notice of *\*practical completion*, the contractor ceases to have access to the *\*works* except by prior arrangement with the owner.

#### Replace **clause M11.1** with the following:

Not used.

#### Replace **clause Q3.1** with the following:

If the owner terminates the engagement of the contractor under **clause Q1** or **Q2** before *\*practical completion*, the owner may exclude the contractor from the *\*site*.





## Schedule 3 – Order of precedence

6. All other documents described below:

The *\*site information* is:  
Clause F3

Blank lined area for site information.

REFERENCE COPY

## Schedule 5a – Forms of guarantee

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### Contractor's \**unconditional guarantee* to the owner

#### Clause C3

for [insert amount \$AUD]  
in favour of [insert name of owner]

[Insert name of owner, and ABN if owner is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of contractor and ABN] of [insert address] (**contractor**) for the construction of the works described in that contract. The contract states that the contractor may elect to give security for the performance of the contract in the form of an unconditional guarantee.

[Insert name of security provider] unconditionally undertakes that if the owner gives it a written notice stating the basis and extent of its entitlement to draw on the undertaking and the amount to which it is entitled, the security provider will pay the owner the amount which the owner declares is due, up to a maximum of the combined amount of [insert amount \$AUD] (the **Amount**).

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the contractor, despite any notice by the contractor or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this undertaking is not affected by any variation of the contract or by any waiver by the owner of any default by the contractor.

This undertaking remains in force until the first of the following events occurs:

- the owner notifies the security provider in writing that this undertaking is no longer required;
- the security provider pays the Amount to the owner ; or
- the owner informs the security provider that the contractor has performed all its obligations and paid all amounts required to be paid under the contract; or
- [insert date of expiry/termination of this undertaking].

This undertaking creates no rights in anyone except the owner and the owner's successors and cannot be assigned.

This undertaking is governed by the law of [insert jurisdiction].

**EXECUTED** on [insert date] as a **Deed**.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

*Signature of attorney*

*Signature of witness*

### Contractor's *\*unconditional guarantee to owner for \*off-site plant or material*

#### Clause C10

for [insert amount \$AUD]  
in favour of [insert name of owner]

[Insert name of owner, and ABN if owner is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of contractor and ABN] of [insert address] (**contractor**) for the construction of the works described in that contract. The contract states that the contractor may elect to claim in a progress claim the contractor's valuation of off-site plant or material intended to be incorporated into the works but not yet delivered to the site. The contractor must provide the owner with security for the amount claimed for the off-site plant or material in the form of an unconditional guarantee.

[Insert name of security provider] unconditionally undertakes that if the owner gives it a written notice stating the basis and extent of its entitlement to draw on the undertaking and the amount to which it is entitled, the security provider will pay the owner the amount which the owner declares is due, up to a maximum of the combined amount of [insert amount \$AUD] (the **Amount**).

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the contractor, despite any notice by the contractor or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this undertaking is not affected by any variation of the contract or by any waiver by the owner of any default by the contractor.

This undertaking remains in force until the first of the following events occurs:

- the owner notifies the security provider in writing that this undertaking is no longer required;
- the security provider pays the Amount to the owner ; or
- the owner informs the security provider that the contractor has performed all its obligations and paid all amounts required to be paid under the contract; or
- [insert date of expiry/termination of this undertaking].

This undertaking creates no rights in anyone except the owner and the owner's successors and cannot be assigned.

This undertaking is governed by the law of [insert jurisdiction].

**EXECUTED** on [insert date] as a **Deed**.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

*Signature of attorney*

*Signature of witness*

## Schedule 5c – Forms of guarantee

### Owner's \**unconditional guarantee* to the contractor

#### Clause C14

for [insert amount \$AUD]  
in favour of [insert name of contractor]

[Insert name of contractor, and ABN if contractor is a company] of [insert address] (**contractor**) has entered into a written contract dated [insert contract date] with [insert name of owner and ABN] of [insert address] (**owner**) for the construction of the works described in that contract. The contract states that the owner may elect to give security for the performance of the contract in the form of an unconditional guarantee.

[Insert name of security provider] unconditionally undertakes that if the contractor gives it a written notice stating the basis and extent of its entitlement to draw on the undertaking and the amount to which it is entitled, the security provider will pay the contractor the amount which the contractor declares is due, up to a maximum of the amount of [insert amount \$AUD] (the **Amount**).

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the owner, despite any notice by the owner or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this undertaking is not affected by any variation of the contract or by any waiver by the contractor of any default by the owner.

This undertaking remains in force until the first of the following events occurs:

- the contractor notifies the security provider in writing that this undertaking is no longer required;
- the security provider pays the Amount to the contractor ; or
- the contractor informs the security provider that the owner has performed all its obligations and paid all amounts required to be paid under the contract; or
- [insert date of expiry/termination of this undertaking].

This undertaking creates no rights in anyone except the contractor and the contractor's successors and cannot be assigned.

This undertaking is governed by the law of [insert jurisdiction].

**EXECUTED** on [insert date] as a **Deed**.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

*Signature of attorney*

*Signature of witness*

*\*Provisional sums*

## Section K

[illegible]

† Note: If the owner intends on using a particular person to carry out the work for which a *\*provisional sum* has been allowed the name of that person should be shown above. If the identity of the particular person is not known at the time that this contract is executed the intention to use a particular person should be indicated by inserting 'Yes' above in the column headed 'Particular person'.

*\*Prime cost sums*

## Section K

[illegible]

† Note: If the owner intends on using a particular person to carry out the work for which a *\*prime cost sum* has been allowed the name of that person should be shown above. If the identity of the particular person is not known at the time that this contract is executed the intention to use a particular person should be indicated by inserting 'Yes' above in the column headed 'Particular person'.



## Items to be supplied by the owner – Schedule 8

### Items to be supplied by the owner for incorporation in the *\*works*

#### Clause N1

Items to be supplied by the owner and installed by the contractor (and only the costs of installation are included in the *\*contract price*):

REFERENCE COPY

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Items to be supplied and installed by the owner (and no allowance has been included in the *\*contract price* for supply and installation):

REFERENCE COPY

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# Warranty insurance certificate – Schedule 10

## Certificate in respect of insurance

**Building Act 1993**

**Section 135**

A contract of insurance complying with the Ministerial Order for Domestic Building Insurance issued under section 135 of the *Building Act 1993*, namely:

### Type of insurance

Insurance has been issued

by:

*Insert name of insurer*

in respect of:

*Insert brief description of domestic building work*

at:

*Insert address or description of land*

carried out by:

*Insert name of builder*

for:

*Insert details of building owner "the insured"*

Subject to the *Building Act 1993*, the Ministerial Order and the conditions of the insurance contract, cover will be provided to the building owner named in the domestic building contract and to the successors in title to the building owner.

Date:

*Insert date*

Signed for and on behalf of  
the insurers:

*Insert signature*

# A Overview

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## A1 Cooperative contracting

- .1 Under this contract, the contractor and the owner must:
  - a act reasonably
  - b cooperate in all matters
  - c avoid obstructing the other and
  - d provide all reasonable assistance and cooperation to the other who is a claimant under an insurance policy required by this contract.
- .2 These obligations do not affect either *\*party's* rights or responsibilities 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 keep the *\*site* and any area affected by the *\*works* clean and tidy at all times
  - d comply with all instructions issued under this contract by the architect
  - e immediately comply with an *\*urgent instruction* issued by the architect unless the contractor considers it to be an instruction for a *\*variation*. If so, the contractor must *\*promptly* notify the architect and the procedures under **clause J1** apply.
  - f obtain all *\*official documents* required under this contract to complete the *\*works*, and any shown in **item 35a of schedule 1**
  - g comply with all other obligations under this contract
  - h comply with all *\*relevant legislation*
  - i bring the *\*works* to *\*practical completion* in accordance with **clause M1**.
- .2 If the contractor's capacity to complete the *\*works* is altered to the extent that it may be unable to meet its obligations, it must immediately inform the architect and the owner in writing.
- .3 If relevant occupational health and safety legislation (**OH&S legislation**) requires it, the contractor:
  - a acknowledges that the owner has engaged and appointed it under the OH&S legislation as the principal contractor for the *\*works* and
  - b will discharge the responsibilities imposed on it as the principal contractor under the OH&S legislation.

## A3 Warranties by the contractor

- .1 The contractor warrants that it:
  - a has the capacity to enter into this contract
  - b has the skill and the technological, human and financial resources necessary to perform its obligations
  - c is registered or licensed, as the case may be, in accordance with the *\*relevant legislation* to carry out the *\*works* and the registration or licence number is shown in **item 1 of schedule 1**
  - d has been allocated the Australian Business Number (ABN) shown in **item 1 of schedule 1** for taxation purposes and that it is registered for *\*GST*
  - e 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*.

- .2 The contractor also warrants that:
- a the *\*works* will be carried out in a proper and workmanlike manner and in accordance with the plans and specification set out in this contract
  - b all materials to be supplied by the contractor for use in the *\*works* will be good and suitable for their purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new
  - c the *\*works* will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the *\*Building Act* and the regulations made under that Act
  - d the *\*works* will be carried out with reasonable care and skill and will be completed by the date for *\*practical completion* specified by this contract, as adjusted
  - e as the *\*works* described in the *\*contract documents* consist of the erection or construction of a home, or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the *\*works* are completed
  - f if this contract states the particular purpose for which the *\*works* are required, or the result which the owner wishes the *\*works* to achieve, so as to show that the owner relies on the contractor's skill and judgement, the contractor warrants that the *\*works* and any materials used in carrying out the *\*works* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result and
  - g any *\*provisional sum* included by the contractor in **schedule 6** has been calculated with reasonable care and skill taking account of all the information reasonably available at the date this contract is executed, including the nature and location of the *\*site*.

#### A4 Obligations of the owner

- .1 The owner must:
- a subject to **subclause A2.1f**, obtain and give to the contractor all *\*official documents* required to begin the *\*works* and any shown in **item 35b** of **schedule 1**
  - b obtain from neighbouring owners all easements that are required before the *\*works* can begin
  - c give possession of the *\*site* in accordance with this contract
  - d appoint an architect to administer this contract and provide appropriate *\*contract documents* for the *\*works*, given the nature of the *\*works*
  - e indemnify the contractor for any liability incurred by the contractor to the extent that the liability is a result of any default or negligence of the architect or any other consultant the owner engages in relation to the *\*works*
  - f issue instructions to the contractor only through the architect
  - g pay the contractor the *\*contract price* as adjusted in accordance with this contract
  - h comply with all other obligations under this contract.
- .2 If the owner's financial position alters 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 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.

## A Overview

### A5 Warranties by the owner

- .1 The owner warrants that it has the financial resources necessary to perform its obligations.
- .2 If the owner has financed the *\*works* using a lending institution, the owner warrants that the institution is shown in **item 1** of **schedule 1**.
- .3 If the owner has shown an Australian Business Number (ABN) in **item 1** of **schedule 1**, it warrants that:
  - a the ABN is correct
  - b it will notify the contractor if it is not registered for *\*GST* and
  - c it will *\*promptly* notify the contractor if its ABN or registration status changes.
- .4 If relevant occupational health and safety legislation (**OH&S legislation**) requires it, the owner:
  - a appoints the contractor as the principal contractor for the *\*works* as defined in the OH&S legislation
  - b authorises the contractor to have management and control of the workplace and to exercise such authority of the owner as is necessary to enable the contractor to discharge the responsibilities imposed on the contractor as the principal contractor under the OH&S legislation.
- .5 The owner warrants that all *\*owner-specified materials* comply with the *\*building code*. However, 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 they 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 such a notice, then the warranty in **clause A5.5** does not apply and is of no effect.
- .6 A notice given under **clause A5.5** is not a request for an instruction or *\*urgent instruction*.

### A6 Architect to administer contract

- .1 The architect for the purposes of this contract is shown in **item 2** of **schedule 1**.
- .2 The architect is appointed to administer this contract on behalf of the owner and the owner warrants that the architect has authority to administer this contract.
- .3 The architect is the owner's agent for giving instructions to the contractor. However, in acting as assessor, valuer or certifier, the architect acts independently and not as the agent of the owner.
- .4 The owner must 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 both the owner and the contractor. The owner must not compromise the architect's independence in acting as assessor, valuer or certifier.
- .5 The architect is not the owner's agent for giving or receiving notices under **clause A8**, **clause A9**, **section P** and **section Q**.
- .6 If the architect resigns, or becomes incapable of acting as architect, or if the owner terminates the engagement of the architect, the owner must immediately nominate another architect and give written notice of the name and address of the architect to the contractor.
- .7 If the contractor has no reasonable objection to the nominated architect, that person will be appointed as the architect for the purposes of this contract.
- .8 The newly appointed architect is bound by the written decisions of any previous architect.

## A7 Architect's instruction

- .1 The architect may issue an instruction at any time during this contract provided that the instruction is given in writing.
- .2 The architect may give the contractor an *\*urgent instruction* for a *\*variation* which
  - a it considers will not:
    - .1 affect any *\*permit* or
    - .2 cause any delay or
    - .3 add more than 2% to the *\*contract price* shown in **item 4 of schedule 1**
  - b is identified as urgent, and
  - c the architect:
    - .1 can demonstrate involves urgent circumstances or
    - .2 has received a request for an *\*urgent instruction* from the contractor (which may, because of the urgent circumstances, be given by the contractor orally and confirmed in writing within one *\*working day*) or
    - .3 is ratifying urgent action being taken by the contractor to prevent or minimise damage to the *\*works*.
- .3 If it is not reasonably possible for the architect to give the *\*urgent instruction* in writing, because of the urgent circumstances, the architect may give the contractor an oral instruction and confirm the *\*urgent instruction* in writing within one *\*working day*, but an *\*urgent instruction* to proceed with a *\*variation* must be in writing and in accordance with **clause J3**.
- .4 If the contractor notifies the architect that it considers the *\*urgent instruction* to be an instruction for a *\*variation* which will
  - .1 affect any *\*permit* or
  - .2 cause any delay or
  - .3 add more than 2% to the *\*contract price* shown in **item 4 of schedule 1**
 the architect may not confirm the *\*urgent instruction* in writing but may issue a different *\*urgent instruction*, issue an instruction in accordance with the procedures under **clause J1**, or both.
- .5 For the purposes of this contract, an *\*urgent instruction* has the same effect as an instruction issued by the architect in accordance with **subclause A7.1**, unless the context, or express words in the relevant clause, distinguish between the two forms of instruction.

## A8 Disputing architect's certificate or written decision

- .1 If a *\*party* wishes to dispute a certificate, notice, written decision or written assessment issued by the architect, the *\*party* must give the architect written notice under this clause within 20 *\*working days* after receiving the certificate, notice, written decision or written assessment.
- .2 If the *\*party* fails to give a notice under **subclause A8.1**, that *\*party* will not be entitled to dispute the matter at all.
- .3 The architect must assess a notice given under **subclause A8.1** and give a written decision to the *\*party* and the other *\*party* within 10 *\*working days*.
- .4 If a *\*party* wishes to dispute a written decision given under **subclause A8.3**, the requirements of **section P** apply.

## A Overview

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### A9 Disputing architect's failure to act

- .1 If a *\*party* wishes to dispute the failure of the architect to issue something, the *\*party* must give the architect written notice under this **clause A9** *\*promptly* after becoming aware of the failure of the architect to issue something.
- .2 The architect must assess a notice given under **subclause A9.1** 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 A9.2**, or the architect's failure to give that decision, the requirements of **section P** apply.

### A10 Failure to give certificate, written decision or notice is not acceptance

- .1 If the architect fails to issue a certificate, notice, written decision or written assessment required under this contract in respect of a claim, this does not mean that the claim has been accepted or is valid.

### A11 Compensation is sole remedy

- .1 If the contractor or the owner is entitled to compensation as determined under this contract, that compensation, when paid in full, is the sole and complete remedy for the contractor or the owner under this contract.

### A12 Section 132 compliance

- .1 The contractor and the owner agree that the basis upon which a *\*variation* to the *\*works* may be carried out, and the basis for payment for any *\*variation* is to be strictly as set out under the building contract. In particular, the contractor and the owner acknowledge in accordance with section 132(2) of the *\*Act* that **sections A, H and J** of the contract impose more onerous obligations than are imposed under the *\*Act*.



## B1 Discrepancies or omissions in documents

- .1 If either *\*party* discovers a discrepancy, an ambiguity, or an omission in, or between, any of the *\*contract documents*, that *\*party* must *\*promptly* give written notice to the architect. The architect must *\*promptly* resolve the discrepancy, the ambiguity, or the omission by giving a written instruction to the contractor and a copy to the owner.

## B2 Order of precedence of documents

- .1 Unless otherwise shown in **schedule 3**, the order of precedence of the *\*contract documents* is as follows:
  - a any special conditions shown in **schedule 2a**
  - b any owner occupation special conditions shown in **schedule 2b**
  - c the conditions set out in this contract and **schedule 1**
  - d the specifications for the *\*works* in the order shown in **schedule 3**
  - e the drawings for the *\*works* shown in **schedule 3**
  - f any other document in the order shown in **schedule 3**.
- .2 Large scale drawings take precedence over small scale drawings.
- .3 An instruction from the architect to resolve a discrepancy, an ambiguity, or an omission that is not in accordance with the order of precedence referred to in **clause B2**, is an instruction for a *\*variation*.

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

- .1 The contractor and the owner must *\*promptly* give to the architect or the architect must *\*promptly* give to the contractor, a copy of any *\*official document* either in or coming into its possession in relation to the *\*works*.
- .2 An *\*official document* is:
  - a any report, notice, order, permit, licence, approval or other document required or issued by an *\*authorised person* in relation to the *\*works*
  - b any document listed in **item 35 of schedule 1**
  - c any statutory approval
  - d an approval for provision of *\*infrastructure services* to the *\*site*
  - e any other document required under any *\*relevant legislation*.
- .3 An *\*authorised person* is a building inspector or certifier or other person authorised under *\*relevant legislation* having jurisdiction over the *\*works*.

## C Security

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### C1 Security provided to owner

- .1 If the contractor is required by **item 7a of schedule 1** to provide security for performance of its obligations under this contract, the contractor must:
  - a allow the owner to withhold a cash retention sum or
  - b provide the owner with the *\*unconditional guarantees* according to the alternative required by **item 7b of schedule 1**.

### C2 Security to owner by cash retention

- .1 If the security provided by the contractor is cash retention, the owner may withhold up to 10% of each progress payment until the value held equates to the percentage shown in **item 9 of schedule 1** of the *\*contract price*.
- .2 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.
- .3 A legal or accounting practice's trust account will not discharge the owner's obligations under **clause C2.2**.

### C3 Security to owner by *\*unconditional guarantees*

- .1 If the security provided by the contractor is *\*unconditional guarantees*, the contractor must within 10 *\*working days* after this contract is executed give to the owner two *\*unconditional guarantees* each equal in value to the percentage shown in **item 10a of schedule 1** of the *\*contract price*.
- .2 An *\*unconditional guarantee* is an unconditional undertaking or a performance undertaking from a recognised financial institution approved by the owner. The guarantees must be of an approved type. The type shown in **schedule 5a** is approved.
- .3 If the *\*works* are to be completed as separable parts, shown in **item 29 of schedule 1**, separate security by the same type of *\*unconditional guarantees* must be provided for each part and the total value of separate security held by way of *\*unconditional guarantees* must be equal to an amount that is the percentage of the *\*contract price* shown in **item 10 of schedule 1**.
- .4 If the owner is registered for *\*GST* and able to claim an *\*input tax credit*, the value of the *\*unconditional guarantees* which must be provided to the owner is exclusive of the *\*GST* component of the *\*contract price*.

## C4 Change to type of security to owner

- .1 If the owner has not nominated the type of security in **item 7b** of **schedule 1** on or before executing this contract, and the *\*works* are not being completed as separable parts, the contractor may by written notice to the architect change the type of security up until the day the architect issues the notice of *\*practical completion*.
- .2 If the architect receives the written notice from the contractor, the architect must take the contractor's request into account in preparing the next progress certificate.
- .3 To change from cash retention:
  - a the contractor must give the owner the *\*unconditional guarantees* in accordance with **clause C3** when it presents the owner with the certificate and *\*tax invoice* under **clause N6**
  - b subject to **clause N8**, the owner must then close the designated trust account and pay the contractor in accordance with **clause N7**, the amount of cash retention held in accordance with **clause C2**, within the period shown in **item 11** of **schedule 1**
  - c the owner must also provide the contractor with a copy of the bank statement as at closure of the designated trust account.
- .4 To change from *\*unconditional guarantees*:
  - a the contractor must allow the owner cash retention to the value of the *\*unconditional guarantee* being held by the owner under **clause C3**
  - b the owner must return the *\*unconditional guarantees* to the contractor when the amount shown on the certificate is paid under **clause N7**
  - c the owner must hold the cash retention in accordance with **clause C2**.
- .5 Failure to comply with the procedures under this clause does not affect a *\*party's* obligations under **clause N6**, **N7** or **N8** in relation to amounts shown on the certificate which are not identified as security under this contract.

## C5 Owner's right to draw on security provided to it

- .1 The owner may draw on the security provided by the contractor under **clause C1** only if:
  - a a certificate issued by the architect in favour of the owner under any of **clause N5**, **N12**, **Q9** or **Q17** is not paid by the contractor within the period shown in **item 11** of **schedule 1**
  - b the contractor has not disputed the relevant certificate under **clause A8** and
  - c the owner has complied with the procedure set out in **clause C6**.

## C6 Procedure for owner to draw on security provided to it

- .1 To draw on the security under **clause C5**, the owner must first notify the contractor and the architect in writing of the basis and amount of its entitlement. The notification is not required if the architect has issued a certificate in favour of the owner under **clause Q9** or **Q17**.
- .2 If the security is cash retention, the owner may then draw on the cash retention to the extent of its entitlement.
- .3 If the security is by *\*unconditional guarantees*, the owner must first give to the security provider a written demand for payment stating the amount of its entitlement.

## C Security

### C7 Owner's release of security on *\*practical completion*

- .1 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 If the security is cash retention:
  - a 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
  - b the contractor, on receiving the certificate, must prepare a *\*tax invoice* in accordance with **clause N6** and give both documents to the owner for payment
  - c the amount stated in the certificate must be paid in accordance with **clause N7**.
- .3 If the security is by *\*unconditional guarantees*, the owner must return one of the guarantees to the contractor within the period shown in **item 11 of schedule 1**.

### C8 Owner's release of security on *\*practical completion* of separable part

- .1 When the architect issues the notice of *\*practical completion* of a separable part of the *\*works*, the contractor is entitled to the release of 50% of the appropriate proportion of the security then held.
- .2 If the security for the separable part is by cash retention:
  - a the architect must assess the appropriate proportion of the security calculated as the architect's estimate of the value of the separable part of the *\*works*, as at the date of *\*practical completion* of that part, assessed by reference to the *\*contract price* for the separable part (as adjusted), divided by the *\*contract price* (as adjusted)
  - b the architect must give to the contractor a certificate equal to 50% of the appropriate proportion of the security then held at the same time that the notice of *\*practical completion* for the separable part is issued
  - c the contractor, on receiving the certificate, must prepare a *\*tax invoice* in accordance with **clause N6** and give both documents to the owner for payment, and
  - d the amount stated in the certificate must be paid in accordance with **clause N7**.
- .3 If the security for the separable part is by *\*unconditional guarantees*, the owner must, within the period shown in **item 11 of schedule 1** after the date the architect issues the notice of *\*practical completion*, give the contractor one of the two guarantees held for that part.

### C9 Owner's release of security on final certificate

- .1 When the architect issues a final certificate for a separable part or the whole of the *\*works* under **clause N12**, or a certificate under **clause Q9** or **Q17**, as the case may be, the owner must release to the contractor any remaining security for the whole, or the separable part, as applicable, less any amount owing to the owner under the certificate.
- .2 If the security is cash retention, the architect must take into account any remaining security when preparing the final certificate.
- .3 If the security is by *\*unconditional guarantee* and:
  - a the certificate is in favour of the contractor, the owner must give to the contractor the remaining *\*unconditional guarantee* within the period shown in **item 11 of schedule 1**
  - b the certificate is in favour of the owner, the certificate is evidence of the basis and amount of the owner's entitlement, and the owner may draw on the security under **clause C6** before returning the remaining *\*unconditional guarantee* to the contractor within the period shown in **item 11 of schedule 1**.

C10 Security to owner for *\*off-site plant or material*

- .1 If the contractor wishes to include the contractor's valuation of any *\*off-site plant or material* in a progress claim submitted under **section N**, the contractor must provide the owner with an *\*unconditional guarantee* for the purpose, for the amount claimed for the *\*off-site plant or material*. The *\*unconditional guarantee* must be of an approved type. The type shown in **schedule 5b** is approved.
- .2 The contractor must provide the *\*unconditional guarantee* to the owner at the time the relevant progress claim is submitted to the architect in accordance with **clause N3**.
- .3 *\*Off-site plant or material* means any plant or material that is intended to be incorporated in the *\*works* but has not yet been delivered to the *\*site*.

C11 Release of security for *\*off-site plant or material*

- .1 The contractor must notify the architect in writing when the contractor considers that the *\*off-site plant or material* which has been included in a progress certificate is incorporated into the *\*works* in accordance with the *\*contract documents*.
- .2 Within 10 *\*working days* of receiving the notice, the architect must decide whether the *\*off-site plant or material* has been incorporated and within that period, notify the contractor and owner in writing of its decision.
- .3 If the architect decides that the *\*off-site plant or material* has been incorporated into the *\*works* in accordance with the *\*contract documents*, the notice must inform the owner that the security provided under **clause C10** must be released within the period shown in **item 11** of **schedule 1**.
- .4 If at any time before the owner receives a notice from the architect under **subclause C11.3**, the contractor repays the owner an amount equal to the amount of the security, or the amount of the security remaining following the owner drawing on the security under **clause C13**, as applicable, the owner must return the *\*unconditional guarantee* to the contractor within the period shown in **item 11** of **schedule 1**.

C12 Owner's right to draw on security for *\*off-site plant or material*

- .1 The owner may draw on the security provided by the contractor under **clause C10** only if:
  - a the *\*off-site plant or material* has suffered loss or damage which would prevent its incorporation into the *\*works* in accordance with the *\*contract documents* or
  - b a search of the *\*PPSR* reasonably suggests there is evidence that the title in the *\*off-site plant or material* is unable to pass from the contractor to the owner or
  - c a certificate issued by the architect in favour of the owner under **clause Q9** or **Q17** is not paid by the contractor within the period shown in **item 11** of **schedule 1** and the contractor has not disputed the certificate under **clause A8** and
  - d the owner has complied with the procedure set out in **clause C13**.

C13 Procedure for owner to draw on security provided to it for *\*off-site plant or material*

- .1 To draw on the security under **clause C12**, the owner must first notify the contractor and the architect in writing of the basis and amount of its entitlement. The notification is not required if the architect has issued a certificate under **clause Q9** or **Q17**.
- .2 The owner must give to the security provider a written demand for payment stating the amount of its entitlement.

## C Security

### C14 Security provided to contractor

- .1 If required by **item 8 of schedule 1**, the owner must provide security to the contractor by *\*unconditional guarantee*. The *\*unconditional guarantee* must be of an approved type. The type shown in **schedule 5c** is approved.
- .2 The amount of security the owner must provide to the contractor is equal to the percentage of the *\*contract price* shown in **item 10b of schedule 1**. The owner must provide the *\*unconditional guarantee* within 10 *\*working days* after this contract is executed.

### C15 Contractor's right to draw on security provided to it

- .1 The contractor may draw on the security provided by the owner under **clause C14** only if:
  - a a certificate issued by the architect in favour of the contractor under **clause Q9** or **clause Q17** is not paid by the owner within the period shown in **item 11 of schedule 1**
  - b the owner has not disputed the certificate under **clause A8** and
  - c the owner has complied with the procedure set out in **clause C16**.

### C16 Procedure for contractor to draw on security provided to it

- .1 To draw on the security under **clause C15**, the contractor must first notify the owner and the architect in writing of the basis and amount of its entitlement. The notification is not required if the architect has issued a certificate in favour of the contractor under either **clause Q9** or **clause Q17**.
- .2 The contractor must give to the security provider a written demand for payment stating the amount of its entitlement.

### C17 Release of security provided to contractor

- .1 The contractor must release the security when:
  - a a certificate in favour of the contractor issued by the architect following the issue of the notice of *\*practical completion* of the *\*works* or a notice of *\*practical completion* of the last of the separable parts of the *\*works*, has been paid or
  - b a certificate in favour of the owner is issued by the architect following the issue of the notice of *\*practical completion* of the *\*works* or a notice of *\*practical completion* of the last of the separable parts or
  - c the contractor has received the payment demanded from the security provider in accordance with a certificate in favour of the contractor issued under **clause Q9** or **Q17** whichever is applicable.
- .2 The contractor must return the *\*unconditional guarantee* to the owner within the period shown in **item 11 of schedule 1**.

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 the following subclauses.
- .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 *\*off-site plant or material* and any of the following items on or in the immediate vicinity of the *\*site*:
  - a the *\*works*
  - b any *\*necessary work*
  - c any structure on the *\*site* before the time the contractor is given possession of the *\*site*
  - d on-site materials or equipment intended to be incorporated in the *\*works*, including any items shown in **schedule 8** and
  - e 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 in respect of any liability arising from negligence or breach of contract or breach of statutory duty by the contractor or any of the contractor's employees, agents, licensees or subcontractors.
- .2 The amount of the contractor's indemnity to 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.
- .3 Except if expressly provided otherwise in this contract, if the contractor is to indemnify, reimburse, pay a contribution or pay damages to the owner under this clause or under any other clause, the amount the contractor must pay the owner is:
  - a reduced by any *\*input tax credit* directly obtained or obtainable by the owner and
  - b increased by *\*GST* the owner has paid or will pay on that indemnity, reimbursement, contribution or damages.

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 the following subclauses.
- .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*, including any items shown in **schedule 8**.

## D Liability

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### D4 Indemnity after *\*practical completion*

- .1 While the owner bears the risks described in **clause D3**, the owner must indemnify the contractor in respect of 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 obligation of the owner 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.
- .3 Except if expressly provided otherwise in this contract, if the owner is to indemnify, reimburse, pay a contribution or pay damages to the contractor under this clause or under any other clause, the amount the owner must pay the contractor is:
  - a reduced by any *\*input tax credit* directly obtained or obtainable by the contractor and
  - b increased by *\*GST* the contractor has paid or will pay on that indemnity, reimbursement, contribution or damages.

### D5 Reinstatement during period when contractor bears risk

- .1 If an event occurs which causes loss or damage during the period when the contractor bears the risk, the contractor must *\*promptly* reinstate, at its own expense, the lost or damaged items referred to in **subclause D1.4**.
- .2 The owner must indemnify the contractor for the cost of reinstatement under this clause to the extent to which the owner, its employees, agents or separate contractors was responsible for the event which caused the loss or damage.

### D6 Separable parts – risk

- .1 Risk in a separable part of the *\*works* passes from the contractor to the owner at 4.00pm on the day the architect issues the notice of *\*practical completion* for that separable part.



## E1 Public liability insurance

- .1 Subject to **clause E3**, 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 party nominated in **item 12 of schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds, against:
  - a injury to or illness, disease or death of, any person occurring directly as a result of the *\*necessary work*, on or in the immediate vicinity of the *\*site* (excluding liability in respect of worker's compensation and employer's liability) and
  - b loss of, or damage to the property of, any person occurring directly as a result of the *\*necessary work*, on or in the immediate vicinity of the *\*site* (except the *\*works*, or materials or equipment on the *\*site* that are intended to be incorporated in the *\*works*, or plant, tools and equipment used on the *\*site*).
- .2 The policy must contain all terms required by law and the following terms:
  - a the insurance covers the interests of the owner, the contractor and any other person involved in the *\*necessary work*
  - b the policy does not apply to loss or liability caused by breach of professional duty by the owner's consultants or any other person involved in the *\*necessary work*
  - c the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

## E2 Contract works insurance

- .1 Subject to **clause E3**, 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 party nominated in **item 13 of schedule 1** must take out and maintain insurance naming the contractor, its subcontractors and the owner as insureds against loss of or damage to the items referred to in **subclause D1.4**.
- .2 The policy must contain any term required by law and each of the following:
  - a the insurance covers the interests of the owner and the contractor
  - b notice of a claim given by any one insured is effective in relation to each of the insureds
  - c the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

## E3 Separable parts – insurance

- .1 If the contractor is required to provide the insurance under **clauses E1 and E2**, from 4.00pm on the day that the architect issues the final certificate in respect of a separable part, the contractor is relieved of the obligation to insure that separable part of the *\*works* under **clause E1 or E2**.

E4 Entitlement to *\*input tax credit*

- .1 The *\*parties* must each notify their insurer of their respective entitlement to an *\*input tax credit* on the insurance premium within 20 *\*working days* of the insurance being taken out. Each *\*party* must indemnify the other for any loss arising out of the *\*party's* failure to notify the insurer. On request by a *\*party*, the other *\*party* must provide evidence that it has complied with this clause.

## E Insurance

### E5 Insurance cover

- .1 The insurance against loss of or damage to the items referred to in **clause E2** must cover:
  - a the full reinstatement or replacement cost of the *\*works*, materials and equipment on the *\*site* that are intended to be incorporated in the *\*works*, and plant, tools and equipment used on the *\*site*
  - b additional consultants' fees including the architect's fees, relating to the reinstatement or replacement for the amount shown in **item 14 of schedule 1**
  - c any necessary demolition and removal of debris, for the amount shown in **item 15 of schedule 1** 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 the amount shown in **item 16 of schedule 1**.

### E6 Limited right to arrange insurances

- .1 If one of the *\*parties* is required to take out and maintain either of the insurances under **clause E1** or **E2**, the other may do so if:
  - a the nominated party fails to satisfy the other *\*party* that insurances under **clause E1** or **E2**, and complying with the required terms, are in place at the time possession of the *\*site* is given or
  - b the nominated party fails to comply *\*promptly* with a request from the other *\*party* for either, a statement in writing setting out all the provisions of the insurances, or insurance documentation to the satisfaction of the other *\*party* or
  - c the nominated party fails to satisfy the other *\*party* that the insurance remains in place.
- .2 If the other *\*party* takes out and maintains insurance under this clause and wishes to recover the cost from the nominated party, it must submit to the architect a claim that sets out evidence of the premium cost. The architect must take the claim into account in preparing the next certificate and adjust the *\*contract price* accordingly.

### E7 Contractor and owner not to affect insurance

- .1 The contractor and the owner must not do or fail to do anything, or allow anything to be done or not be done, which might affect any insured's right to recover from the insurer in respect of damage or liability covered by an insurance.

### E8 Worker's compensation and employer's liability insurances

- .1 The contractor must maintain worker's compensation or employer's liability insurance in accordance with the statutory scheme that applies under this contract until the final certificate for the whole, or last separable part of the *\*works*, as the case may be, is issued under **clause N12**. If that scheme does not provide for an indemnity against a common law damages claim by a worker, the contractor must also maintain insurance against that risk.
- .2 The contractor must ensure that each of its subcontractors maintains similar insurances.

## E9 Insurance claims

- .1 Subject to **subclause E9.2**, the contractor has the primary responsibility to make any claim under an insurance policy required by this contract.
- .2 The owner must make a claim if the owner, its agents, employees or licensees directly causes the event giving rise to the loss.
- .3 The following are the obligations of either the owner or the contractor when making an insurance claim for any loss or damage arising from an insured event:
  - a the insurance claim must be made *\*promptly*
  - b the *\*party* making the insurance claim must provide all information which is required under the relevant insurance policy
  - c the *\*party* making the insurance claim must *\*promptly* notify the architect in writing on becoming aware of the event giving rise to the insurance claim
  - d the notice must contain details of the insurance claim
  - e the *\*party* making the insurance claim must *\*promptly* give the architect any additional information the architect reasonably requests.

## E10 Payment of excess

- .1 The *\*party* making a claim under an insurance policy arranged under **clause E1** or **E2** must pay the excess.
- .2 The *\*party* paying the excess may recover the excess cost from the other *\*party* in proportion to the extent to which the personal injury, illness, disease or death or loss or damage is the result of negligence, or breach of contract or breach of statutory duty by the other *\*party*. The excess paid under **clause E10.1** that is to be reimbursed, is the amount shown in **item 17** of **schedule 1**.

## E11 Contractor entitled to make progress claim as result of loss or damage

- .1 If an event occurs which causes loss or damage to:
  - a *\*necessary work* undertaken between the last progress claim and the time that the event giving rise to the loss or damage occurred, or
  - b materials or equipment delivered to the *\*site* since the last progress claim that are intended to be incorporated in the *\*works*,
 the contractor is entitled to submit an additional progress claim to the architect for the *\*necessary work* or materials or equipment on the *\*site* that were, or were intended to be, incorporated in the *\*works*, as the case may be, to which the loss or damage occurred.

## E12 Warranty insurance

- .1 If required by the relevant Ministerial Order made under section 135(1) of the *\*Building Act*, the contractor must take out and maintain *\*warranty insurance* for this contract.
- .2 If required *\*warranty insurance* policy has not been issued before this contract is executed, then until the architect receives satisfactory evidence that the *\*warranty insurance* policy has been issued, the contractor:
  - a may not enforce any provision of this contract
  - b may not carry out any work under this contract.
- .3 Satisfactory evidence for the purpose of **subclause E12.2** may be either a copy of the appropriate policy or a satisfactorily completed Certificate of Currency in the form published in Schedule 2 of the Ministerial Order, as set out in **schedule 10**.
- .4 If **subclause E12.2** applies, the contractor must provide satisfactory evidence to the owner within 7 days after the policy is issued.

## F The site

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

- .1 The owner must give the contractor possession of the *\*site* on or after the date shown in **item 18 of schedule 1**.
- .2 However, the owner is not obliged to give possession of the *\*site* until the owner:
  - a has received, or the architect as the agent of the owner has received, a copy of the contract executed by both *\*parties*
  - b is satisfied that all of the insurances required under **section E** to be provided by the contractor, are in place
  - c has received, or the architect as agent of the owner has received, any *\*official document* required to begin the *\*works* that is required under **item 35a of schedule 1** to be obtained by the contractor.

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

- .1 In relation to the *\*site*, the contractor must 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.
- .2 If access to the site is given for the purposes in **clause F2.1**, the contractor may exclude from the site, without prior notice, any person on the site who does not comply, or in the contractor's reasonable opinion may have not complied, with the contractor's work health and safety policies and procedures.

### 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 and any other information regarding the *\*site* and the physical conditions on and underlying the *\*site* shown in **schedule 4**.

### 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.
- .2 The contractor must indemnify the owner against a claim for any loss, expense or damage incurred by a subcontractor engaged by the contractor or any other person as a result of the contractor failing to examine the *\*site information* or inspect the *\*site*.

### F5 If contractor discovers a *\*latent condition* or *\*valuable item*

- .1 The contractor must notify the architect in writing and seek instructions within 5 *\*working days* if the contractor discovers:
  - a a *\*latent condition* affecting the *\*site* which the contractor considers may result in 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 or
  - b a *\*valuable items* on the *\*site*.
- .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.

- .3 A *\*valuable item* includes minerals, money, treasure, fossils, archaeological remains, historic objects or relics.
- .4 Any *\*valuable items* remains the property of the owner and the contractor must take all necessary steps to avoid removal of, loss of, or damage to, any *\*valuable item*.

F6 Architect to instruct in relation to a *\*latent condition* or *\*valuable item*

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

F7 Contractor entitled to claim for *\*latent condition* or *\*valuable item*

- .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* or a *\*valuable item*.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

F8 Not used

F9 Encroachments

- .1 If the contractor discovers that:
  - a a structure on a neighbouring owner's property encroaches onto the *\*site* or
  - b carrying out the *\*necessary work* will prejudice the right of support of a neighbouring owner's property andthere is no provision for this situation in the *\*contract documents*, then the contractor must:
  - c do nothing to adversely change the situation except to ensure that any adjoining structure is stable
  - d immediately suspend the *\*necessary work* in the vicinity of the situation and
  - e *\*promptly* request an instruction from the architect and
  - f may treat the encroaching structure as a *\*latent condition* for the purpose of a *\*claim to adjust the contract*.
- .2 The contractor must continue any *\*necessary work* which will not adversely affect a situation in **subclause F9.1**.

## G Building the works

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### 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 Contractor's obligations

- .1 The contractor must:
  - a set out the *\*works* and have the setting out certified by a licensed surveyor
  - b direct the manner of performance of the *\*necessary work*
  - c supervise the *\*necessary work* competently
  - d maintain satisfactory industrial relations in relation to the *\*works*
  - e maintain compliant occupational health and safety on the *\*site*.
- .2 If the owner has shown a requirement for a particular quality assurance system in **item 19 of schedule 1**, the contractor must have that quality assurance system in place before taking possession of the *\*site*, and the contractor must inspect, test, record and rectify *\*defects* in accordance with that quality assurance system and the *\*contract documents*.

### G3 Contractor to appoint representative

- .1 The person named as the contractor's representative in **item 1 of schedule 1** is the contractor's representative for the purposes of this contract, particularly for receiving instructions from, and giving information to, the architect. The contractor may change its representative by giving written notice to the architect.
- .2 The contractor must ensure that a contractor's representative is appointed at all times.

### G4 Subcontracting

- .1 The contractor may subcontract any part of the *\*works*, but not the *\*works* as a whole. The contractor is liable for the *\*necessary work* done by its subcontractors.
- .2 The contractor must take responsibility for 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.

### G5 Contractor to give program to architect

- .1 The contractor must give the architect a program within 10 *\*working days* after being given possession of the *\*site*. The program must include each of the following:
  - a the dates of commencement and completion of the major stages of the *\*works* and any separable parts of the *\*works*
  - b the date for *\*practical completion*
  - c the start and completion dates of all trades
  - d a critical path.
- .2 The program is not part of this contract.

### G6 Contractor to give updated program

- .1 The contractor must give the architect an updated program when the date for *\*practical completion* has been adjusted by 5 *\*working days* or more or such other period as agreed. The updated program must indicate how the previous program has been affected by any adjustments of time.

## G7 Architect may instruct opening up or testing of the *\*works*

- .1 The architect may at any time give to the contractor a written instruction to open up or carry out tests on elements of the *\*works* other than as required by the *\*contract documents*. The contractor must *\*promptly* comply with the instruction.

## G8 Contractor entitled to claim for costs of opening up or testing

- .1 The contractor is entitled to make a *\*claim to adjust the contract* in relation to any loss, expense or damage that results from an instruction under **clause G7**, only if the opening up or testing does not reveal *\*defective work*.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

## G9 Architect may instruct amendment to program

- .1 At the owner's request, the architect must instruct the contractor in writing to amend the program. When the contractor receives the instruction, it must amend the program and comply with the amended program unless it *\*promptly* gives the architect written notice that it cannot reasonably comply with the amended program.
- .2 An instruction issued under this clause is to be treated as an *\*urgent instruction*.

## G10 Contractor entitled to claim for program amendment

- .1 The contractor is entitled to make a *\*claim to adjust the contract* in relation to any loss, expense or damage that results from an instruction from the architect to amend the program, except if the instruction results from a failure by the contractor to diligently progress the *\*works* so as to be able to achieve *\*practical completion* by the date for *\*practical completion* as adjusted, or any other act or omission by the contractor.
- .2 If the *\*works* are to be completed as separable parts, this clause applies to each separable part.
- .3 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

## G11 Architect may instruct suspension of the *\*works*

- .1 At the owner's request, the architect must instruct the contractor in writing to suspend the whole of the *\*works*. The contractor must *\*promptly* comply with the instruction. If the suspension continues for 15 *\*working days* or more, the contractor may remove from the *\*site* any materials or equipment intended to be incorporated in the *\*works* and not paid for by the owner, and any plant, tools and equipment belonging to the contractor.
- .2 If the suspension continues for more than 20 *\*working days* the contractor may terminate its engagement in accordance with **clause Q13** as if it has already given the notice of termination under **clause Q12**.

## G12 Architect may instruct recommencement of the *\*works*

- .1 After an instruction to suspend the *\*works* has been given and the owner wishes to recommence the *\*works*, the architect must instruct the contractor in writing to recommence the *\*works*. The contractor must comply with the instruction. If the contractor has left the *\*site*, it must *\*promptly* return to the *\*site* and proceed with the *\*works*.
- .2 This clause does not apply if the contractor has terminated its engagement in accordance with **clause G11**.

## G Building the works

### G13 Contractor entitled to claim for suspension and recommencement of the *\*works*

- .1 The contractor is entitled to make a *\*claim to adjust the contract* in relation to any loss, expense or damage that results from an instruction from the architect to suspend the *\*works* and for recommencement of the *\*works*.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

### G14 Owner may use separate contractors for separate work

- .1 The owner is entitled to use separate contractors to carry out the separate work or do other things shown in **item 20 of schedule 1**.
- .2 The owner must ensure that any separate contractor carries out its work safely, causes as little interference as possible to the contractor's:
  - a *\*necessary work*
  - b plant and materials delivered to the *\*site* for incorporation into the *\*works*
  - c plant and equipmentand liaises with the contractor in relation to the manner, dates and times for carrying out the separate work.

### G15 Contractor's obligations in relation to separate contractor

- .1 The contractor must *\*promptly* provide the architect with appropriate information relating to the *\*site* to enable any potential separate contractor to make an appropriate allowance in pricing its separate contracts and to plan its activities.
- .2 The contractor must cooperate with any separate contractor appointed by the owner.

### G16 Contractor entitled to claim for act or omission by separate contractor

- .1 The contractor is entitled to make a *\*claim to adjust the contract* in relation to any loss, expense or damage that results from an act or omission of a separate contractor beyond that which a competent contractor might have anticipated, having regard to the *\*contract documents* and the requirements of **clause G14**.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

### G17 When contractor entitled to unfixed or demolished materials

- .1 The contractor owns and will own the following:
  - a all demolished materials, and
  - b all unfixed materials supplied by the contractor, but only until the owner has paid for the materials.
- .2 **Clause G17.1** applies unless the *\*contract documents* state otherwise.



## 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 20 *\*working days* after receiving an instruction or, if no instruction is issued, within 20 *\*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 an instruction to proceed with a *\*variation*, the requirements for submission of the claim are set out in **clause H2**.
- .3 If the claim results from an *\*urgent instruction*, suspension of the *\*works* or a delay in the progress of the *\*works*, the contractor is not required to give the first notification required under **subclause H1.1**, but the detailed claim must be submitted within 20 *\*working days* after the *\*urgent instruction* is issued or the suspension ends or the delay ends, whichever occurs first.

## H2 Details required for claim

- .1 A *\*claim to adjust the contract* must contain 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, on a trade by trade basis, of any extra costs or savings including
    - .1 the cost of relevant preliminaries and
    - .2 the allowance for contractor's overheads and profit at the rate shown in **item 21 of schedule 1**
  - c reference to the rates and unit prices in any bill of quantities, if applicable
  - d reference to schedules of rates, if applicable
  - e any documentation required to be provided under any *\*relevant legislation*
  - f any required adjustment to the date for *\*practical completion* and
  - g any *\*adjustment of time costs* associated with the claim.

## H3 Architect to assess claim

- .1 The architect must *\*promptly* assess the *\*claim to adjust the contract* and in so doing the architect must consider the detailed claim submitted by the contractor and any further information the architect requests the contractor to supply.
- .2 If the architect needs additional information to assess the claim, the architect must issue a written request to the contractor.
- .3 The contractor must *\*promptly* give to the architect any additional information the architect reasonably requests.

## H Claims to adjust the contract

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### H4 Architect to give assessment

- .1 The architect must, within 20 *\*working* days after receiving the claim, 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 or a failure to issue a decision issued under this clause in accordance with **clause A8** but, in accordance with **clause P1**, must continue to perform its contractual obligations.

### H5 Sum recoverable for claim for *\*adjustment of time costs*

- .1 If a sum or sums per day is shown in **item 22** of **schedule 1**, a claim by the contractor is limited to that sum. If no sum or sums per day is shown, the contractor is entitled to an adjustment to the *\*contract price* equal to the loss, expense or damage it incurs as a result of the approval of an adjustment by the architect to the date for *\*practical completion*.

### H6 Architect may adjust contract in absence of claim

- .1 If the contractor has not made a *\*claim to adjust the contract* in relation to any change which results from complying with any instruction given under **section J** for a *\*variation* or from causes of delay noted in **clause L1** or **L2**, the architect may adjust the contract at any time up to the issue of the final certificate under **clause N12**, or a certificate under **clauses Q9** or **Q17**.

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### I Not used

## J1 Architect may instruct *\*variation* to the *\*works*

- .1 The architect may give to the contractor a written instruction for a *\*variation* at any time before the date of *\*practical completion*. However, except if **subclause J2.2** applies, the contractor must continue to perform the *\*works* in accordance with the *\*contract documents* until it receives an instruction to proceed under **clause J3**.
- .2 The instruction for a *\*variation* may include an instruction to provide within 20 *\*working days*, or longer period if stated in the instruction, 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* and its effect on the *\*contract price*
  - b an estimate of the effect of the *\*variation* on the date for *\*practical completion*.
- .3 The contractor may request an instruction to proceed from the architect if it considers that a *\*variation* may be required. The request must be in writing and state:
  - a the reason for and scope of, the *\*variation*
  - b its effect on the *\*works* and any effect on a *\*permit*
  - c its effect on the date for *\*practical completion*
  - d the full cost of the *\*variation* and its effect on the *\*contract price*.
- .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 J6** to **J8** apply.
- .6 The contractor and the owner agree that an instruction issued under **subclause J1.1** is a notice given under s.38(1) of the *\*Act*, and a request under **subclause J1.3** is a notice given under s.37(1) of the *\*Act*.

## J2 Contractor to review instruction

- .1 The contractor must review any written instruction issued by the architect under **clause J1.1**.
- .2 If the instruction will not:
  - a result in an adjustment to the *\*contract price*
  - b require an adjustment to the date for *\*practical completion* or
  - c require an alteration to any *\*official document*
 then the contractor:
  - d must carry out the instruction *\*promptly*
  - e is not required to obtain an instruction to proceed, and
  - f is not entitled to any adjustment to the contract as a result of carrying out the instruction.
- .3 If the instruction will:
  - a result in an adjustment to the *\*contract price*
  - b require an adjustment to the date for *\*practical completion* or
  - c require an alteration to any *\*permit*
 the contractor must within 20 *\*working days*, unless it has received a request for information under **clause J1.2**, notify the architect in writing, stating:
  - d the effect of the *\*variation* on the *\*works* and any effect on a *\*permit*
  - e its effect on the date for *\*practical completion*
  - f the full cost of the *\*variation* and its effect on the *\*contract price*.

## J Variation to the works

- .4 Except where **subclause J2.2** applies, the contractor must continue to carry out the *\*works* in accordance with the *\*contract documents* until a further instruction is received under **clause J3**, and is not entitled to any adjustment to the contract as a result of carrying out an instruction to which **subclause J2.3** applies, unless it receives an instruction to proceed following its notification under **subclause J2.3**.
- .5 The contractor and the owner agree that a notification of the architect in writing under **subclause J2.3** is a notice under s.38(3)(a) of the *\*Act*.

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

- .1 Within 5 *\*working days* after receiving the requested information under **subclause J2.3** the architect must:
  - a instruct the contractor in writing whether or not to proceed
  - b instruct or further instruct the contractor, as the case may be, under **subclause J1.2** or
  - c instruct the contractor to negotiate with the architect as agent of the owner on the scope, cost or time of the *\*variation* and the time by which an offer in negotiation must be accepted.
- .2 If the architect has instructed the contractor to begin negotiation on the *\*variation*, the architect may at any time before the date of *\*practical completion* issue a further instruction to proceed with the *\*variation* which confirms the details of the acceptance of any quotation to adjust the contract scope, time or cost. Any instruction issued following agreement reached in negotiation on the *\*variation* must be given not more than two *\*working days* after the agreement is reached.
- .3 Within 5 *\*working days* after receiving all requested or further requested information under **subclause J1.2**, or a request under **subclause J1.3**, the architect must instruct the contractor whether or not to proceed with the *\*variation*.
- .4 An instruction to proceed under **subclause J3.3** must confirm acceptance of, and provide a copy of, the contractor's:
  - a quotation for the whole of the cost of the *\*variation* and
  - b estimate of an effect on the date for *\*practical completion*.
- .5 The contractor and the owner agree that an instruction to proceed under **subclause J3.4** is a notice under s.38(5)(a) of the *\*Act*.

### J4 If contractor receives written instruction to proceed

- .1 If the architect instructs the contractor to proceed with the *\*variation*, the contractor must:
  - a *\*promptly* proceed with the *\*variation* and
  - b notify the architect in writing when the *\*necessary work* for the *variation* has been completed.

### J5 Adjustment to the contract after written instruction to proceed

- .1 If the architect issues a written instruction to proceed that confirms acceptance of a quotation, the architect must adjust the *\*contract price* and the date for *\*practical completion* (if applicable) in accordance with the quotation in the next certificate.

### J6 If *\*authorised person* issues *\*official document*

- .1 If an *\*authorised person* issues an *\*official document* to the contractor which requires a *\*variation* to the *\*works*, 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.

### J7 Architect to give instruction

- .1 If the architect receives an *\*official document* from the contractor under **clause J6** the architect must *\*promptly* issue a written instruction to the contractor regarding the *\*official document* within 5 *\*business days* of receiving the *\*official document*.
- .2 The architect's instruction must be either an instruction in accordance with **subclause J1.2** or an *\*urgent instruction* under **clause A7**.

### J8 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 J7** 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 **schedule 6** 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, 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 **schedule 7** is a sum exclusive of *\*GST* included in the contract for:
  - a a foreseeable items 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 contract period 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 **subclause 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 items 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*. The contractor must notify the architect in writing if *\*GST* is not applicable to the fee or charge.
- .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 accepting the quotation.
- .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 H4**.
- .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.

## Adjustment of provisional and prime cost sums K

### K3 Architect may instruct contractor to use particular person for *\*provisional* or *\*prime cost sum*

- .1 Except for payment of a fee or charge to a *\*relevant authority*, the architect may give an instruction to the contractor for a person other than the contractor to perform work or to supply or supply and install an items for which a *\*provisional sum* or *\*prime cost sum* has been included in the *\*cost of building work*.
- .2 The architect may only issue an instruction under this clause if the person is identified in **schedule 6** or **schedule 7**, or the intention to use a particular person whose identity was not known at the time the contract was executed is shown in **schedule 6** or **schedule 7**.
- .3 That person will become a subcontractor unless:
  - a the contractor objects to the person on reasonable grounds and *\*promptly* notifies the architect in writing or
  - b the architect has been notified in writing by the person that it is unwilling to enter into a subcontract with the contractor on terms acceptable to the contractor.
- .4 If that person does not become a subcontractor for either reason under **subclause K3.3**:
  - a that person will become a separate contractor in accordance with **clause G14**
  - b **clauses G15** and **G16** will apply and
  - c the *\*provisional sum* or *\*prime cost sum* will be deducted from the *\*contract price*.

### K4 Adjustment for *\*provisional* or *\*prime cost sum*

- .1 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**,
  - 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 more than the *\*provisional sum* or *\*prime cost sum*, the extra cost will be increased by the percentage shown in **item 23** of **schedule 1** and added to the *\*cost of building work*.
- .3 If the assessed cost of performance of the *\*necessary work*, connection of an *\*infrastructure service*, or supply, or supply and installation is less than the *\*provisional sum* or *\*prime cost sum*, the difference will be deducted from the *\*cost of building work*.
- .4 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:
  - a loss of or damage to the *\*works*, or materials or equipment on the *\*site* that are intended to be incorporated in the *\*works*, or plant or equipment used on the *\*site*, provided that loss or damage was not caused by an act or omission of the contractor
  - b the owner failing to give possession of the *\*site* in accordance with **clause F1**
  - c an architect's instruction
  - d *\*relevant authorities*, including a private building surveyor, failing to *\*promptly* give approval for the *\*works* (except when the delay is caused by an act or omission of the contractor)
  - e a dispute with a nearby owner or occupier (except one caused by an act or omission of the contractor)
  - f the owner's consultants failing to *\*promptly* provide necessary information which is properly due to the contractor or which the contractor has specifically requested in writing
  - g widespread industrial unrest not limited to the *\*site* or to any other sites on which only the contractor or any of its subcontractors is working
  - h a suspension of the *\*necessary work* under **clause Q12**
  - i a breach of this contract by the owner
  - j an act of prevention by the owner not otherwise covered by this clause
  - k any act or omission of a separate contractor which causes interference to the contractor beyond that which a competent contractor might have anticipated, having regard to the *\*contract documents* and the requirements of **clause G14**
  - l any delay shown in **item 24 of schedule 1**.
- .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* and the procedures to be followed are stated in **section H**.

### L2 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 disruptive weather conditions exceeding the allowance shown in **item 25 of schedule 1**
  - b any other circumstance exceeding the allowance shown in **item 26 of schedule 1**.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.



## L3 Contractor to notify of delay

- .1 When progress of the *\*works* is delayed by any of the causes in **clause L1** or **L2**, the contractor must, within 2 *\*working days* of becoming aware of the start or end of a delay, as the case may be, notify the architect in writing:
  - a that the *\*works* are being delayed, and state when the delay began, give a description of the cause or causes of the delay and give an estimate of the number of *\*working days* affected and
  - b that the delay has ended, and state when the delay ended.
- .2 Subject to **subclause L3.1**, delays of less than 2 *\*working days* may be notified in the same notice.

## L4 Contractor to allow for delays

- .1 The contractor warrants that the number of days it has allowed to complete the *\*works* includes a reasonable allowance for:
  - a delay due to weather conditions or the effect of weather conditions that is reasonable, having regard to the time of the year when the *\*necessary work* is likely to be carried out, and which will disrupt a *\*critical construction activity*. The contractor's allowance is shown in **item 25** of **schedule 1** and
  - b other delays that it is reasonable to allow having regard to the circumstances of the *\*works*. The contractor's allowance is shown in **item 26** of **schedule 1** and
  - c *\*non-working days*. The contractor's allowance is shown in **item 36** of **schedule 1**.
- .2 A *\*critical construction activity* is an activity which is part of the *\*necessary work* that if delayed will have a direct effect on subsequent activities such that the contractor's ability to achieve *\*practical completion* by the date for *\*practical completion* will be affected.

## L5 Adjustment of provisional allowance for delays

- .1 The contractor is not entitled to an adjustment of time for any of the causes under **clause L4** until the provisional allowance stated in **item 25** and **26** of **schedule 1** has been exceeded for that cause.

## L6 Overlapping delays

- .1 Subject to **clauses L4** and **L5**, when one or more *\*critical construction activities* are delayed by more than one cause at the same time, the architect must assess any *\*claim to adjust the contract* in accordance with this **clause L6**.
- .2 If one overlapping cause of delay further extends the delay resulting from another overlapping cause, the contractor is entitled to:
  - a an adjustment of time equal to the time from the commencement of the first occurring delay to the end of the last overlapping delay, and
  - b *\*adjustment of time costs* for that part of any delay due to an event described in **clause L1** that is not simultaneous with a delay due to an event described in **clause L2**.
- .3 If one overlapping cause of delay does not further extend the delay resulting from another overlapping cause, the contractor is entitled to:
  - a an adjustment of time equal to the period of time from the first occurring overlapping delay and
  - b *\*adjustment of time costs* for that part of any delay due to an event described in **clause L1** that is not simultaneous with a delay due to an event described in **clause L2**.

# 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 27 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
  - b all commissioning tests in relation to the plant and equipment shown in **item 28 of schedule 1** have been carried out successfully and
  - c any 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 Subject to **clause M11**, the owner takes possession of the *\*works* at 4.00pm on the date the architect issues the notice of *\*practical completion*.
- .3 This clause applies to each separable part shown in **item 29 of schedule 1**.

## M2 Inspection by the contractor

- .1 At least 10 *\*working days* before the date the contractor expects that *\*practical completion* will be reached, the contractor must inspect the *\*works* and prepare a detailed schedule of *\*defects* and incomplete work and give a copy of the schedule to the architect.
- .2 At the same time, the contractor must give the architect a written timetable for the correction of *\*defects* and completion of incomplete work.

## M3 Notification to architect of *\*practical completion*

- .1 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 indicating that each item has been corrected or completed to the satisfaction of the contractor.
- .2 The architect must commence its inspection of the *\*works* *\*promptly* and complete the inspection within an agreed time or, if none is agreed, within 10 *\*working days*. The architect must issue a notice or instruction under **clause M4, M5 or M6**.
- .3 Within the agreed time for the architect's inspection, or if none is agreed, within 10 *\*working days*, the contractor must give the architect any *\*official documents* required for occupation and evidence that all the commissioning tests shown in **item 28 of schedule 1** have been successful.

## M4 Architect to decide if the *\*works* have reached *\*practical completion*

- .1 If the architect decides that the *\*works* have reached *\*practical completion*, the architect must give written notice of *\*practical completion* to the contractor and to the owner within 5 *\*working days* after completing the inspection. The notice must state the date when *\*practical completion* was reached.
- .2 The architect must also notify the owner in writing that security must be released in accordance with **clause C7**.

## M5 If the *\*works* not at, but near, *\*practical completion*

- .1 If the architect considers that the *\*works* are not at *\*practical completion*, but are near to *\*practical completion*, the architect must give a written notice to the contractor copied to the owner, listing what is to be done for *\*practical completion* to be reached. The architect must give the notice to the contractor within 5 *\*working days* after completing the inspection.

## M6 If the *\*works* not at, and not near, *\*practical completion*

- .1 If the architect considers that the *\*works* are not at *\*practical completion*, and are not near *\*practical completion*, the architect must give written notice to the contractor and to the owner summarising the reasons for its decision that the *\*works* are not at, and are not near, *\*practical completion*. The architect must give the contractor the written notice within 5 *\*working days* after completing the inspection.

## M7 Contractor to bring the *\*works* to *\*practical completion*

- .1 If the architect gives notice to the contractor under **clause M5** or **M6**, the contractor must *\*promptly* do whatever is necessary for *\*practical completion* to be reached. The contractor must notify the architect in writing when it considers the *\*works* have reached *\*practical completion*. The procedures under **clauses M3** to **M7** apply until the architect decides that the *\*works* have reached *\*practical completion*.

## M8 If architect fails to issue notice of *\*practical completion*

- .1 If the architect fails to issue a notice under **clause M4**, **M5** or **M6** within 5 *\*working days* of completion of the inspection, the contractor may request in writing that the architect issue a notice.
- .2 If the architect fails to issue a notice within 5 *\*working days* of the request:
  - a the contractor may make a *\*claim to adjust the contract* for any loss, expense or damage that results from the failure of the architect to issue a notice and
  - b the date of *\*practical completion* will be the date identified in the contractor's notice made under **clause M3** and
  - c any security must be released in accordance with **clauses C7** or **C8**.
- .3 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

## M9 Division of the *\*works* into separable parts before *\*practical completion*

- .1 If the owner intends to take possession but has not yet taken possession before the whole of the *\*works*, or a part of the *\*works* not identified as a separable part in **item 29** of **schedule 1**, have reached *\*practical completion*, the architect, as agent of the owner, must discuss with the contractor whether the *\*works* should be divided into separable parts and whether there are any consequential adjustments to the *\*contract price*, the date for *\*practical completion* or sequencing of the *\*necessary work*.
- .2 If agreement is reached, the architect must *\*promptly* give to the contractor and to the owner a written notice that the *\*works* are to be divided into defined separable parts.
- .3 If agreement is not reached, the architect, after giving 2 *\*working days* written notice to both the contractor and the owner, may give to the contractor and to the owner a notice stating that the *\*works* are to be divided into defined separable parts.
- .4 If the architect gives a notice under **subclause M9.2** or **M9.3**:
  - a An amended copy of **item 29** of **schedule 1** must be provided with the notice.
  - b If security is *\*unconditional guarantee*, the contractor and the owner are taken to have agreed to change the security provided under **clause C3** into two *\*unconditional guarantees* for each separable part.
  - c If security is by cash retention, the security will be adjusted by the architect in accordance with the procedure stated in **clause C8.2** when preparing the certificate for the separable part which is at *\*practical completion*.
- .5 The owner must cause as little interference as possible to the contractor's performance of the remainder of the *\*works*.
- .6 Division of the *\*works* into separable parts under **subclause M9.2** or **M9.3** is to be treated as an *\*urgent instruction*.

## M Completion of the works

- .7 If the *\*works* are divided into separable parts under this clause, the contractor may make a *\*claim to adjust the contract* for any loss, expense or damage that results from the division into separable parts.
- .8 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

### M10 *\*Practical completion of separable part*

- .1 In respect of any separable part of the *\*works* **clauses M2 to M7** apply as if they refer to the separable part rather than the whole of the *\*works*.
- .2 When preparing a notice of *\*practical completion* in respect of a separable part of the *\*works* under **clause M4** or **M9**, the architect must for the purposes of release of security under **clause C8** state its estimate of the value of the separable part in terms of the *\*cost of building works* as adjusted.

### M11 Possession of the *\*works* before *\*practical completion*

- .1 If the owner takes possession of the whole of the *\*works* or a separable part of the *\*works* before the architect issues the notice of *\*practical completion*, the whole of the *\*works* or that separable part, as the case may be, are to be treated as having reached *\*practical completion*. The architect must issue to the contractor and to the owner a notice of *\*practical completion* for the *\*works* or that separable part, as the case may be, within 5 *\*working days* after being notified in writing that the owner has taken possession, unless **clause M4** applies.
- .2 Possession of the whole of the *\*works* or a separable part of the *\*works*, as the case may be, before the architect issues the notice of *\*practical completion*, is to be treated as an instruction to amend the program under **clause G9** and the contractor may make a *\*claim to adjust the contract*.
- .3 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

### M12 Liquidated damages may be payable

- .1 If the *\*works* or a separable part of the *\*works* identified in **item 29 of schedule 1** have not reached *\*practical completion* by the date for *\*practical completion* as adjusted, the architect must *\*promptly* notify the contractor and the owner in writing of the owner's entitlement to liquidated damages.
- .2 Up to 20 *\*working days* after the date of issue of the notice of *\*practical completion*, the owner may notify the architect in writing whether it will enforce its entitlement to liquidated damages against the contractor.
- .3 The contractor is liable to pay or allow to the owner liquidated damages at the rate shown in **item 30 of schedule 1**.
- .4 For a separable part of the *\*works* which has a specific rate for liquidated damages scheduled in **item 29 of schedule 1**, the contractor is liable to pay or allow to the owner liquidated damages at the rate shown for that separable part, instead of the rate shown in **item 30 of schedule 1**.

## M13 Deduction of liquidated damages

- .1 If the owner notifies the architect in writing under **clause M12**, then the architect must:
  - a notify the contractor of the owner's decision within one *\*working day*, and
  - b deduct liquidated damages from the next and subsequent progress certificates, as applicable.
- .2 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.

## M14 Contractor to correct *\*defects* and finalise work

- .1 The contractor must correct any *\*defects* or finalise any incomplete work, whether before or after the date of *\*practical completion*, within the agreed time as stated in an instruction or if no time is stated, within 10 *\*working days* after receiving a written instruction from the architect to do so.

## M15 If the contractor fails to correct *\*defects* and finalise work

- .1 If the contractor fails to correct a *\*defect* or finalise any incomplete work within the time nominated under **clause M14** or fails to show reasonable cause for the failure together with a timetable for correcting the problem that is acceptable to the architect, the owner may use another person to correct the problem at the cost of the contractor.
- .2 If the owner is required to use another person to rectify a problem, the owner is entitled to make a *\*claim to adjust the contract* in accordance with the procedure stated in **clause H2**.
- .3 If the owner makes a *\*claim to adjust the contract* the architect must *\*promptly* assess the claim and may issue a certificate under **clause N5**.

## M16 Defects liability period

- .1 The defects liability period is shown in **item 31** of **schedule 1** and commences on the date of *\*practical completion* of the *\*works*.
- .2 For a separable part of the *\*works*, if the defects liability period is shown in **item 29** of **schedule 1**, the defects liability period for that separable part is as scheduled and commences on the date of *\*practical completion* of that separable part.
- .3 The architect may notify the contractor that, in respect of any part of the *\*works* that has undergone significant correction within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the corrected work.

## M17 Contractor's obligations during and after defects liability period

- .1 If there is any remaining *\*defect* or incomplete work, or the contractor becomes aware by instruction from the architect or from the contractor's own observations of any *\*defect* or incomplete work during the defects liability period, it must *\*promptly* return to the *\*site* and correct the *\*defect* or finalise the incomplete work. This obligation continues until the *\*defect* is corrected or the incomplete work is finalised, and does not come to an end when the defects liability period is over.
- .2 The architect cannot give the first instruction to correct an outstanding *\*defect* or to finalise any incomplete work after the end of the defects liability period, unless it is for the rectification of a latent *\*defect* and the final certificate has not been issued.

## N Payment for the works

### N1 *\*Contract price*

- .1 The *\*contract price*, shown in **item 4** of **schedule 1** is a lump sum and the contractor represents that the *\*contract price* allows for:
  - a everything reasonably required in accordance with this contract to complete the *\*works*
  - b all *\*provisional sums* and *\*prime cost sums* shown in **schedule 6** and **schedule 7**
  - c installation of any items shown in **schedule 8** to be supplied by the owner and installed by the contractor
  - d rise and fall
  - e all statutory taxes and charges applying 5 *\*working days* before the closing of tenders
  - f import duties and tariffs on imported materials or equipment to be incorporated in or used in the completion of the *\*works* applying 5 *\*working days* before the closing date for tenders
  - g exchange rates applying 5 *\*working days* before the closing date for tenders
  - h relevant industrial awards and work place agreements, site allowances, building industry superannuation levies and long service leave levies and
  - i *\*GST*.
- .2 The *\*contract price* does not include any items to be supplied and installed by the owner, shown in **schedule 8** or specifically identified elsewhere in the *\*contract documents*.

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

- .1 The owner must pay the *\*contract price*, adjusted in accordance with this contract, progressively in accordance with this **section N**.

### N3 Progress claims – procedure for contractor

- .1 The contractor may submit claims for progress payments to the architect either in accordance with **option 1** in **subclause N3.2** or **option 2** in **subclause N3.3**.
- .2 **Option 1:**
  - a The owner must sign the Form 1 at **schedule 1** before signing this contract.
  - b To select **option 1** for this contract, the owner and the contractor must both sign **option 1**, where indicated, and should strike out **option 2**. **If the owner and the contractor do not both sign option 1, option 2 in subclause N3.3 will apply.**
  - c The *\*parties* agree that the progress payments set out in section 40 of the *\*Act* **do not** apply; and instead the stages and percentages of the *\*contract price* as adjusted and amounts payable are as follows:

Name of stage	Work involved in Stage (If this stage is not the same as a stage defined in section 40(1) of the <i>*Act</i> , describe the work that is involved in this stage.)	Percentage of total contract price	Amount of progress payment
One claim for a progress payment in each month	See <b>subclause N3.2d</b> , below	Percentage shown on the certificate issued by the architect under <b>subclause N5.1</b>	Amount shown on the certificate issued by the architect under <b>subclause N5.1</b>

- d The contractor may submit to the architect one claim for a progress payment in each month, on or after the date in each month shown in **item 32** of **schedule 1**, unless a different date is agreed in writing between the contractor and the owner.

- e The claim must set out the contractor's valuation of:
- .1 the works completed
  - .2 materials and equipment delivered to the *\*site* for incorporation in the *\*works*, provided title has passed to the contractor
  - .3 subject to **clause C10**, the value of *\*off-site plant or material*
  - .4 the percentage of the *\*contract price* claimed
- all in relation to the *\*cost of building work*, as adjusted, up to and including the day of the claim.

Signature of owner: \_\_\_\_\_

Date: \_\_\_\_\_

AND

Signature of contractor: \_\_\_\_\_

Date: \_\_\_\_\_

### .3 Option 2:

- a The contractor may submit to the architect one claim at intervals, being stages where the valuation of work claimed to be completed since the date possession of the *\*site* or the previous claim is not greater than the percentage of the *\*contract price* as adjusted, stated below:

Stage	Maximum % of <i>*contract price</i> as adjusted
Completion to base stage	10%
Completion to frame stage	15%
Completion to lock-up stage	35%
Completion to fixing stage	25%

- b The meanings of 'base stage', 'frame stage', 'lock-up stage' and 'fixing stage' are the same as the meanings of those phrases in section 40(1) of the *\*Act*.
- c The owner and the contractor agree that staged payment fixed by section 40(2) of the *\*Act* will apply to this contract.
- .4 The claim in accordance with either option under **subclauses N3.2 or N3.3** is not a *\*tax invoice*, but must identify any amount of *\*GST* that has been included in the claim. The claim must be supported by any information shown in **item 33** of **schedule 1** and a declaration made by the contractor that:
- a all wages and other entitlements including building industry superannuation and long service leave levies due at the date of the declaration have been paid to or on behalf of all employees of the contractor
  - b all monies due to subcontractors at the date of the declaration have been paid
  - c all insurances required to be maintained by the contractor are in force.

## N4 *\*Off-site plant and material warranty*

- .1 The contractor warrants that any *\*off-site plant or material* claimed for payment:
- a is as specified by the *\*contract documents*
  - b is stored securely
  - c is insured appropriately, noting the interest of the owner and
  - d will become the property of the owner on payment of the amount claimed.

## N Payment for the works

### N5 Progress claims – procedure for architect

- .1 The architect must assess a claim for a progress payment and issue to the contractor and to the owner a certificate setting out any payment due to either the owner or the contractor, within 10 *\*business days* after receiving a claim for a progress payment.
- .2 If **clause N3.2** applies, when assessing a claim for a progress payment the architect must take account of each of the following:
  - a any adjustments to the *\*cost of building work* since any previous assessment
  - b the proportion of the *\*cost of building work* claimed representing the value of the work completed up to and including the day of the claim, making allowance for the cost of rectifying *\*defects*, if any
  - c the proportion of the *\*cost of building work* claimed representing the value of materials and equipment delivered to the *\*site* for incorporation in the *\*works* up to and including the day of the claim, provided title has passed to the contractor
  - d the proportion of the *\*cost of building work* claimed, representing the value of *\*off-site plant or material*
  - e an allowance for cash retention where **clause C2** applies
  - f any claim by the owner for a set off of monies due under this contract
  - g the owner's entitlement to liquidated damages, in accordance with **clause M12**, since any previous certificate, calculated up to the date of the certificate
  - h any other matter to be taken into account in accordance with this contract
  - i *\*GST*
  - j if applicable under **clause N18**, the amount of the *\*deposit* paid by the owner under **clause N17.1**.
- .3 If **clause N3.3** applies, when assessing a claim for a progress payment the architect must take account of each of the following:
  - a any adjustments to the *\*cost of building work* since any previous assessment
  - b whether or not the stage of completion set out in **clause N3.3** claimed to be completed has been completed. If so, **clause N3.3** sets out the maximum percentage of the *\*contract price* as adjusted to which the contractor is entitled for completion of the relevant stage, including the proportion of the *\*cost of building work* claimed, representing the value of *\*off-site plant or material*, making allowance for the cost of rectifying *\*defects*, if any
  - c an allowance for cash retention where **clause C2** applies
  - d any claim by the owner for a set off of monies due under this contract
  - e the owner's entitlement to liquidated damages, in accordance with **clause M12**, since any previous certificate, calculated up to the date of the certificate
  - f any other matter to be taken into account in accordance with this contract
  - g *\*GST*
  - h if applicable under **clause N18**, the amount of the *\*deposit* paid by the owner under **clause N17.1**.
- .4 The certificate must:
  - a identify the amount of *\*GST* that has been included
  - b identify the percentage of the *\*contract price*, as adjusted applicable to the amount certified for payment and
  - c give any written reasons for any difference between the *\*cost of building work* amount certified and the (*\*GST* exclusive) amount claimed.
- .5 If the architect reasonably needs additional information to assess the claim, the architect must *\*promptly* ask the contractor for it. If the owner and the contractor have selected **option 1** of **clause N3** and that information is needed to assess only part of the claim, the architect must assess the rest of the claim.



## 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 The amount stated as owing in any certificate must be paid within the period shown in **item 11** of **schedule 1** after delivery of the certificate and the *\*tax invoice* (if applicable).
- .2 The architect may issue a certificate for payment at any time up until the final certificate is issued.

## N8 Before making first progress payment

- .1 Before the owner is obliged to make the first progress payment, the contractor must:
  - a have in place the security by *\*unconditional guarantee* in accordance with **clause C1**
  - b have in place the insurances in accordance with **section E** unless the owner has taken out the insurance in accordance with **clause E6** and
  - c have given the architect the program in accordance with **clause G5**.

## N9 If architect fails to issue certificate

- .1 If the architect fails to issue a certificate on time the contractor may issue a notice in writing to the owner, copied to the architect, requesting the owner to ensure that the architect issues the certificate within 5 *\*working days* after the date the notice is delivered.
- .2 If the architect fails to issue the certificate within 5 *\*working days* after the date the notice is delivered, the contractor is entitled to payment of the full amount of the progress claim within 7 calendar days after the date the notice was delivered.
- .3 If the owner then fails to pay the full amount of the progress claim in accordance with **subclause N9.2**, the contractor may immediately suspend the *\*necessary work* in accordance with **clause Q12**.

## N10 Contractor entitled to make claim

- .1 The contractor is entitled to make a *\*claim to adjust the contract* for any loss, damage or expense that results from the suspension of the *\*necessary work* under **clause Q12**.
- .2 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

## N11 Final claim – procedure for contractor

- .1 The contractor is entitled to submit to the architect a final claim for payment for a separable part, or the whole of the *\*works* as the case may be when:
  - a all defects liability periods have ended
  - b the contractor has rectified all *\*defects* and finalised all incomplete work it became aware of by instruction from the architect or from the contractor's own observations during the defects liability period and
  - c the *\*works* have been completed in accordance with this contract.
- .2 The claim must be supported by any information shown in **item 33** of **schedule 1** and a declaration made by the contractor that:
  - a the contractor has performed its obligations under this contract
  - b all monies due to subcontractors at the date of the declaration have been paid.
- .3 The contractor's final claim must identify any *\*GST* included in the claim.
- .4 The contractor must submit a final claim within 20 *\*working days* after receiving a written request to do so from the architect.

## N Payment for the works

- .5 If the contractor fails to comply with a written request made under **subclause N11.4** the architect may determine the final claim.
- .6 After a final claim has been made under **subclause N11.1** or is treated as having been made under **subclause N11.5**, the contractor is not entitled to make any further claims under this contract.

### N12 Final certificate – procedure for architect

- .1 The architect must *\*promptly* assess the final claim. If the architect reasonably needs additional information to do so, the architect may ask the contractor for it. The contractor must *\*promptly* give the architect any additional information the architect requests. The architect must, within a reasonable time (not exceeding 10 *\*business days*) after receiving the final claim (or the additional information if requested) issue to the contractor and to the owner a final certificate setting out the amount due for payment.
- .2 The certificate must:
  - a identify the amount of *\*GST* that has been included
  - b give written reasons for any difference between the (*\*GST* exclusive) amount certified and the (*\*GST* exclusive) amount claimed and
  - c notify the owner of its obligation to release any remaining security under **clause C9**.
- .3 If the contractor fails to give the architect any additional information the architect asks for within a reasonable time, the architect must *\*promptly* assess the claim on the basis of the information the architect has.
- .4 If the engagement of the contractor is terminated under **clause Q1, Q2, Q13 or Q14** a certificate will be issued in accordance with **clause Q9 or Q17**, as applicable.

### N13 Final certificate – *\*tax invoice*

- .1 On receiving the final certificate from the architect, the *\*party* to be paid must deliver the final 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 final certificate to the other *\*party*.

### N14 Final certificate – obligation to pay

- .1 The amount stated as owing in the final certificate must be paid within the period shown in **item 11 of schedule 1** after delivery of the certificate and the *\*tax invoice* (if applicable).

### N15 Effect of final certificate

- .1 The final certificate must state the architect's assessment of all outstanding entitlements under this contract. 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**.

### N16 Interest on overdue amounts

- .1 Each *\*party* must pay interest on any money that it owes the other but fails to pay on time. In the case of the owner, this includes any delay caused by the failure of the architect to issue a progress certificate on time.
- .2 The interest rate is shown in **item 34 of schedule 1**.
- .3 The interest is calculated daily, from the date the money should have been paid. The interest must be paid on the last day of each month. If interest due on the last day of a month is not paid, it is immediately capitalised and added to the money outstanding.

## N17 Payment of *\*deposit*

- .1 If the owner is required by **item 37a** of **schedule 1** to provide a *\*deposit* to the contractor, the owner must provide the *\*deposit* within the period shown in **item 11** of **schedule 1** after the contractor has complied with **clause C3** and **section E** (as applicable).
- .2 If the owner is required by **item 37a** of **schedule 1** to provide a *\*deposit* to the contractor, the contractor must:
  - a only apply the *\*deposit* towards the contractor's *\*cost of building work* and to no other purpose.
  - b not make any request, claim or demand on the owner to pay the *\*deposit* unless and until the contractor has complied with **clause C3** (if applicable according to **clause C1.1b**) and has obtained all insurances under **Section E**, as well as home warranty insurance (or equivalent).
- .3 In calculating the *\*deposit* amount stated in **item 37b** of **schedule 1**, the percentage (if applicable) of the *\*contract price* must not be higher than the applicable maximum limit set out in the *\*Act*.

## N18 Time for assessing *\*deposit*

- .1 The architect must assess the *\*deposit* only after the time the contractor submits the claim immediately after *\*practical completion*.
- .2 When assessing that claim under **clause N5**, the architect must assess the *\*deposit* by deducting from any amount owed by the owner to the contractor in this claim, the *\*deposit* paid by the owner under **clause N17.2**.

O Not used

## P Dispute resolution

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### 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 states what the dispute is and requires the representatives of 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.
  - b if the dispute or difference is not resolved within 5 *\*working days* after the dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute must meet within 10 *\*working days* after the dispute notice is delivered and make a bona fide attempt to resolve the dispute or difference.
- .2 The operation of this clause is not affected by one *\*party* receiving a proposal under **clause P3** from the other within 10 *\*working days* after the dispute notice is delivered.

### P3 Alternative dispute resolution

- .1 If the dispute or difference is not resolved within 10 *\*working days* after the dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute may agree, subject to **subclause P3.2**, to resolve their dispute or difference by mediation.
- .2 Mediation is only available if:
  - a a written proposal suggesting mediation under **clause P4** is delivered by at least one *\*party* within 15 *\*working days* after a dispute notice is delivered
  - b the *\*parties* agree in writing on mediation under **clause P4** within 20 *\*working days* after a dispute notice is delivered and
  - c the *\*parties* commence the mediation under **clause P4** within 25 *\*working days* after a dispute notice is delivered.

### P4 Mediation

- .1 After written agreement under **clause P3** to mediate the dispute or difference, and within 25 *\*working days* after a dispute notice is delivered, representatives of the owner and the contractor with authority to settle a dispute must agree in writing on the identity of the mediator or, if not, the *\*party* that issued the dispute notice must request in writing, copied to the other *\*party*, that the chairperson of the chapter of the Resolution Institute in Victoria, nominates the mediator.
- .2 Subject to **subclause P4.3**, the mediation must be conducted in accordance with the mediation rules of the Resolution Institute unless the *\*parties* agree alternative rules in writing within 5 *\*working days* after agreement or nomination of the mediator.
- .3 The mediation must commence within 10 *\*working days* after agreement or appointment of the mediator under **subclause P4.1**, unless the *\*parties* agree in writing to a longer period.
- .4 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.

### P5 Legal rights

- .1 Nothing in this section prevents either *\*party* seeking resolution of any dispute under this contract, in accordance with the *\*Act*, at any time.
- .2 If any dispute between the parties in connection with this contract cannot be resolved by informal agreement, either party may make an application to Domestic Building Dispute Resolution Victoria (DBDRV) under Part 4 of the *\*Act*. For any referral made under Part 4, the party making the application must provide a copy of the referral to the other party within 5 business days of making the original application.
- .3 When a *\*party* makes an application to DBDRV, the contract's dispute resolution processes as set out in **clauses P2, P3 and P4** are suspended pending the outcome of the DBDRV process.

# Termination of engagement Q

## 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*. The notice must specify the default, and state that it is given under this clause.
- .2 If the default is not remedied, or the contractor fails to show reasonable cause why it cannot be remedied within 10 *\*working days*, or such additional days as agreed with the architect, the owner may terminate the engagement of the contractor by giving the contractor a written notice of termination.
- .3 The notice of termination must state that it is given under this clause and a copy must be given to the architect.

## Q2 Owner may immediately terminate

- .1 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.
- .2 The notice of termination must state that it is given under this clause and a copy must be given to the architect.

## Q3 Owner may take possession of the *\*site*

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2** before the architect has issued the notice of *\*practical completion*:
  - a **clause D3** applies as if the architect had issued the notice of *\*practical completion* on the day the owner terminates the engagement of the contractor, and **clauses E1** and **E2** apply, except that the owner must take out the insurance and
  - b the owner may take possession of the *\*site* and exclude the contractor from it.
- .2 The owner may take possession of any documents, plant, tools, unused materials and equipment on the *\*site* belonging to the contractor, and may use them in completing the *\*works*. The owner must make available for collection by the contractor, the items of which it has taken possession, as soon as it receives the certificate issued under **clause Q9**. The owner is not liable for fair wear and tear of anything of which the owner has taken possession.
- .3 At any time after termination of the contractor's engagement, the architect may instruct the contractor to remove all or some of its property from the *\*site*. The contractor must comply within 10 *\*working days*, failing which the owner may remove the property identified in the architect's instruction, and dispose of it. The owner must give notice in writing to the contractor and the architect of the amount the property is disposed for. The owner must pay the contractor the amount the property is disposed for, less the costs of removal and disposal.

## Q4 Assignment of contractor's rights

- .1 If the engagement of the contractor has been terminated under **clause Q1** or **Q2**, the contractor must assign to the owner all of its rights under any subcontract relating to the supply of labour, services, materials or equipment for the *\*works* if directed to do so by the architect.

## Q5 Owner may contract with others to complete the *\*works*

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2**, the owner may contract with others to complete the *\*works*.

## Q Termination of engagement

### Q6 Owner not bound to make any further payment to contractor

- .1 If the engagement of the contractor has been terminated under **clause Q1** or **Q2** the owner will not be bound to make any further payment to the contractor unless an obligation to pay arises under **clause Q9**.

### Q7 Owner may pay subcontractors or suppliers

- .1 If the owner terminates the engagement of the contractor under **clause Q1** or **Q2**, the owner may at its sole discretion directly pay any subcontractor or supplier for any *\*necessary work*, materials or equipment necessary to complete the *\*works*. Any sum paid by the owner to the subcontractor or supplier is to be taken into account by the architect in preparing its certificate under **clause Q9**, provided the owner has not already paid the contractor for the same *\*necessary work*, materials or equipment.

### Q8 Architect to give assessment of cost of completing the *\*works*

- .1 If the engagement of the contractor has been terminated under **clause Q1** or **Q2**, the architect must *\*promptly* make a written assessment of the cost to the owner of completing the *\*works* and issue to the contractor and to the owner a copy of that assessment. For this purpose, the cost to the owner of completing the *\*works* excludes any amount paid by the owner under **clause Q7**. That assessment is to be reflected in the certificate made under **clause Q9**.

### Q9 Architect to give certificate of amount payable to contractor or owner

- .1 If the engagement of the contractor has been terminated under **clause Q1** or **Q2**, and the assessment required under **clause Q8** has been made, the architect must *\*promptly* prepare a certificate as to the amount payable, including *\*GST*, by one *\*party* to the other and issue it to the contractor and to the owner. That certificate is to be calculated using the following procedure.
- .2 The architect is to determine the amount of the *\*contract price* as adjusted at the date of termination of the engagement of the contractor.
- .3 The architect is to determine the total of:
  - a the value of building work completed, including *\*GST*, assessed in the last certificate issued under **clause N5**
  - b the cost to the owner of completing the *\*works*, including *\*GST*, as assessed by the architect under **clause Q8**
  - c any sum paid directly by the owner to a subcontractor or supplier, including *\*GST*, under **clause Q7** not already paid to the contractor for the same work, materials or equipment necessary to complete the *\*works*
  - d the architect's assessment of any claim by the owner under this contract for a set off of monies due and
  - e any liquidated damages in accordance with **clause M12**, since any previous certificate, calculated up to the date of termination of the engagement of the contractor.
- .4 The architect is to determine the total of:
  - a the amount of security drawn or appropriated to date and
  - b the amount of any security by cash retention held by the owner under **clause C2**.
- .5 The certified amount payable to the owner or the contractor, as the case may be, is the total determined in **subclause Q9.2**, less the total determined in **subclause Q9.3**, plus the total determined in **subclause Q9.4**.
- .6 The architect must also state on the certificate the value of any remaining security by *\*unconditional guarantee*.
- .7 If a certificate is issued under this clause, it takes the place of a final certificate under **clause N12**, and **clause C9** applies.

## Q10 Contractor or owner to pay under **clause Q9**

- .1 If the certified amount calculated by the architect under **clause Q9.5** is a positive figure, the owner must pay the contractor that amount. If that amount is negative, the contractor must pay the owner that amount.
- .2 After receiving the 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*.
- .3 The amount stated as owing must be paid within the period shown in **item 11** of **schedule 1** after receipt of the certificate and the *\*tax invoice*.

## Q11 Contractor may require owner to remedy default

- .1 If the owner defaults by:
  - a failing to make a progress payment on time or
  - b failing to meet any other substantial obligation under this contractthen the contractor may give the owner a written notice stating that:
  - c it is given under this clause
  - d the owner must rectify the default within 10 *\*working days* after receipt
  - e if the default is not so rectified, the contractor will be entitled to proceed under **clause Q12** to suspend the *\*necessary work* or subsequently under **clause Q13** to terminate its engagement.
- .2 The contractor must give a copy of the notice to the architect.

## Q12 Contractor may suspend if default not remedied

- .1 If after receiving a notice under **clause Q11**:
  - a the owner fails to rectify the default
  - b the owner fails to show reasonable cause why the default cannot be remedied within time or
  - c **subclause N9.3** applies,the contractor may immediately suspend the *\*necessary work* by giving the owner written notice.
- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.
- .3 If, after the suspension of the *\*necessary work*, the owner rectifies the default, the contractor is entitled to make a *\*claim to adjust the contract* for any loss, expense or damage that results from the suspension of work.
- .4 The requirements for making a *\*claim to adjust the contract* and the procedures to be followed are stated in **section H**.

## Q13 Contractor's subsequent right to terminate

- .1 After the contractor has given the owner written notice of suspension under **clause Q12**, the contractor may terminate its engagement under this contract by giving the owner written notice of termination.
- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.

## Q Termination of engagement

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### Q14 Contractor may immediately terminate

- .1 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.
- .2 The notice must state that it is given under this clause. A copy of the notice must be given to the architect.

### Q15 Contractor's entitlement after termination

- .1 If the contractor terminates its engagement under **clause Q13** or **Q14** the owner must pay the contractor the amount the owner would have had to pay if the owner had wrongfully repudiated the contract.

### Q16 Procedure for contractor to make claim

- .1 Within a reasonable time of terminating its engagement under **clause Q13** or **Q14** the contractor must submit to the architect a claim setting out the contractor's entitlement, calculated on the same basis as if the owner had wrongfully repudiated the contract.

### Q17 Architect to give certificate

- .1 The architect must *\*promptly* assess any claim made by the contractor under **clause Q16** 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 N12**, and **clause C9** applies.

### Q18 Contractor or owner to pay under **clause Q17**

- .1 On receiving the 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*.
- .2 The amount stated as owing must be paid within the period shown in **item 11** of **schedule 1** after delivery of the certificate and the *\*tax invoice*.

### Q19 If this contract is frustrated

- .1 If this contract is frustrated at law or the *\*parties* agree that the contract is frustrated, the contractor is entitled to submit a claim for:
  - a the value of the *\*works* at the date of frustration, less any progress payments that have already been made
  - b the value of any security then held by the owner
  - c the non-recoverable costs the contractor has incurred, or entered into an agreement to incur, to enable the contractor to complete the *\*works*
  - d the non-recoverable costs the contractor has incurred or will incur in order to cease the *\*necessary work* and
  - e loss of profit.
- .2 The architect must *\*promptly* assess the claim and issue to the contractor and to the owner a final certificate specifying the amount for payment. If a final certificate is issued under this clause, it takes the place of a final certificate under **clause N12**, and **clause C9** applies.
- .3 A final certificate issued under this clause must be paid in accordance with **clause Q18**.



## 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**
  - c emailing it to the *\*party* or the architect or attaching an electronic copy to the email, but only 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 hand delivered is to be treated as having been received when it is left at the relevant address.
- .2 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.
- .3 A document sent by fax is to be treated as having been received as soon as the sender receives an error free transmission report from the correct fax number. If a document is delivered, or an error free transmission report is received after 5.00pm in the time zone of the *\*site* the document is to be treated as having been delivered at the beginning of the next *\*working day*.
- .4 A document sent by email is to be treated as having been received when the sender receives a return email, which is an email in reply or from the recipient's e-mail system confirming delivery, or that it has been read. If an email is sent after 5.00pm in the time zone of the *\*site* the email is to be treated as having been delivered at the beginning of the next *\*working day*, whether or not the return email is received on the day of sending.

## R3 Assignment

- .1 Neither of the *\*parties* 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 owner or the architect has agreed with the contractor in relation to the matters it deals with. Neither *\*party* may rely on an earlier contract, or on anything else said or done by the other *\*party* (or by an officer, agent or employee of the other *\*party*) before this contract was entered into.

## R5 Contract to benefit successors and assignees

- .1 This contract continues for the benefit of, and binds, a successor in title of a *\*party*, including a person to whom a *\*party's* rights and obligations are assigned in accordance with this contract.

## R Miscellaneous

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### R6 Severability

- .1 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this contract and the rest of this contract is not affected. This does not apply if the clause or part of a clause goes to the heart of the transaction contemplated by this contract.

### R7 Waiver

- .1 The fact that a *\*party* or the architect fails to do, or delays in doing, something it is entitled to do under this contract, does not amount to a waiver of that *\*party's* or the architect's right to do it. Any waiver by a *\*party* or the architect must be in writing. A written waiver is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

### R8 Governing law

- .1 This contract is governed by the law of the Victoria and the *\*parties* submit to the non-exclusive jurisdiction of its courts.

### R9 Compliance with law

- .1 Both *\*parties* must comply with *\*relevant legislation* or any order, code, ordinance or *\*official document* of a *\*relevant authority* applicable to the *\*works* and this contract.

### R10 Change in *\*relevant legislation*

- .1 If, on or after the date of the contract, any *\*relevant legislation* changes, or new legislation comes into force that requires a change in the *\*works*, the contractor must *\*promptly* notify the architect in writing giving details of the effect on the *\*works*. The architect must *\*promptly* issue an instruction to the contractor.

### R11 Interpretation of headings

- .1 The headings in this contract are used as a guide only and do not form part of it.

### R12 Contractor and owner to observe confidentiality

- .1 Confidential information is information marked as confidential when provided by one *\*party* to the other. Each *\*party* must not disclose any confidential information except to the extent that either *\*party* is required, or entitled to do so, by law.
- .2 The contractor must not advertise its relationship with the owner or its involvement in the *\*works* without the written permission of the owner, which must not be unreasonably withheld.
- .3 The contractor must ensure that its subcontractors are bound by a clause similar to this clause. The owner's written permission to the contractor applies to the subcontractors, unless the owner specifically restricts the permission in writing.

### R13 Owner to pay any duty

- .1 The owner must pay any duty payable under *\*relevant legislation* in relation to execution of this contract.

### R14 General interpretation

- .1 A reference to the singular includes the plural and the plural includes the singular.
- .2 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.

## S1 Definitions

<i>Act</i>	<i>Domestic Building Contracts Act 1995</i>
<i>adjustment of time costs</i>	includes any loss, expense or damage reasonably incurred by the contractor that results from a delay due to the causes referred to in <b>clause L1</b>
<i>authorised person</i>	a building inspector or certifier or other person authorised under <i>*relevant legislation</i> having jurisdiction over the <i>*works</i>
<i>Building Act</i>	<i>Building Act 1993</i>
<i>building code</i>	means Volumes One and Two of the National Construction Code as in force as at the date of commencement of the <i>*works</i>
<i>business day</i>	any day other than a Saturday, Sunday, or statutory public holiday in Victoria
<i>claim to adjust the contract</i>	a claim made to the architect to adjust the <i>*contract price</i> (including <i>*adjustment of time costs</i> ) or the date for <i>*practical completion</i> or both
<i>contract documents</i>	any special conditions shown in <b>schedule 2</b> , the conditions of this contract, the specifications, the drawings and any other documents shown in <b>schedule 3</b>
<i>contract price</i>	see <b>clause N1</b>
<i>cost of building work</i>	the actual net cost of the <i>*works</i> excluding any amounts for <i>*GST</i>
<i>critical construction activity</i>	see <b>clause L4</b>
<i>defect or defective work</i>	work that is: <ul style="list-style-type: none"> <li>a in breach of any of the warranties set out in the <i>*contract documents</i></li> <li>b not in accordance with the standard or quality of building work specified in the <i>*contract documents</i></li> </ul>
<i>deposit</i>	a part-payment towards the <i>*contract price</i> inclusive of <i>*GST</i> payable in accordance with <b>clause N17</b> and <b>item 36 of schedule 1</b>
<i>GST</i>	goods and services tax levied under the <i>*GST Act</i>
<i>GST Act</i>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i>
<i>infrastructure service</i>	a service to the <i>*site</i> for which there is an alternative source of supplier, or supply, such as gas, electricity, telecommunications, water, stormwater or sewerage
<i>input tax credit</i>	has the same meaning as 'input tax credit' under the <i>*GST Act</i>
<i>insolvency event</i>	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: <ul style="list-style-type: none"> <li>a the person is declared, made or becomes insolvent</li> <li>b an execution or distress process is levied against the person's assets which include the person's income</li> <li>c the person enters into a deed of company arrangement with the person's creditors</li> </ul>

## S Definitions

	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.
<i>latent condition</i>		see <b>clause F5</b>
<i>necessary work</i>		all work including any temporary work necessary to complete the <i>*works</i>
<i>non-working days</i>		weekends, statutory public holidays and rostered days off, recognised industry shut-down periods and any other foreseeable breaks in the continuity of the <i>*works</i> in Victoria
<i>official document</i>		see <b>clause B3</b>
<i>off-site plant or material</i>		see <b>clause C10</b>
<i>owner-specified materials</i>		all items, materials, fixtures and fittings sourced or supplied and requested by the owner to be incorporated into the <i>*works</i>
<i>party or parties</i>		the owner or the contractor or both, as the case may be
<i>permit</i>		a document issued by an <i>*authorised person</i> granting approval in relation to the <i>*works</i>
<i>PPSR</i>		the Personal Property Security Register, or equivalent national register for security interests in personal property from time to time
<i>practical completion</i>		see <b>clause M1</b>
<i>prime cost sum</i>		see <b>clause K1</b>
<i>promptly</i>		as soon as practicable
<i>provisional sum</i>		see <b>clause K1</b>
<i>relevant authority</i>		a body or organisation, statutory or otherwise, which has authority over the <i>*works</i> in accordance with <i>*relevant legislation</i> , including an <i>*infrastructure service</i> supplier able to exclusively supply the <i>*site</i>
<i>relevant legislation</i>		Acts, regulations, <i>*official documents</i> and official interpretations of them that have a direct relationship to the work being carried out by an authority having jurisdiction of the <i>*works</i>
<i>site</i>		the place at which the <i>*works</i> are to be constructed and any other place made available by the owner to the contractor under this contract (briefly described in <b>item 6</b> of <b>schedule 1</b> )
<i>site information</i>		see <b>clause F3</b>

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<i>tax invoice</i>	an invoice for payment complying with the requirements of the * <i>GST Act</i>
<i>unconditional guarantee</i>	see <b>clause C3</b>
<i>urgent instruction</i>	see <b>clause A7</b>
<i>valuable item</i>	see <b>clause F5</b>
<i>variation</i>	see <b>clause J1</b>
<i>warranty insurance</i>	domestic building warranty insurance required by Ministerial Order issued under section 135(1) of the * <i>Building Act</i>
<i>working day</i>	Monday to Friday excluding * <i>non-working days</i>
<i>works</i>	the completed construction set out in the * <i>contract documents</i> (briefly described in <b>item 5 of schedule 1</b> ).

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