

MAJOR WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



MASTER BUILDERS
AUSTRALIA

ABIC MW 2018 H WA

Major Works Contract for Housing
in Western Australia

Only for a project with a contract price below
\$500,000 and above \$7,500

Contract Price: \$ _____

Owner: _____

Contractor: _____

Site: _____

REFERENCE COPY

Table of contents

Schedules

1	Schedule 1 – Contract information	1
2	Schedule 2 – Special conditions	8
3	Schedule 3 – Order of precedence	10
4	Schedule 4 – Site information	12
5	Schedule 5 – Forms of guarantee	13
6	Schedule 6 – Provisional sums	16
7	Schedule 7 – Prime cost sums	17
8	Schedule 8 – Items to be supplied by the owner	18
9	Schedule 9 – Notice for the Home Owner	19

A Overview

A1	Cooperative contracting	24
A2	Obligations of the contractor	24
A3	Warranties by the contractor	25
A4	Obligations of the owner	25
A5	Warranties by the owner	26
A6	Architect to administer contract	27
A7	Architect's instruction	27
A8	Disputing architect's certificate or written decision	28
A9	Disputing architect's failure to act	28
A10	Failure to give certificate, decision or notice	28
A11	Compensation is sole remedy	28
A12	Building licence conditions	28

B Documents

B1	Discrepancies or omissions in documents	29
B2	Order of precedence of documents	29
B3	Contractor and owner must supply copies of *official documents	29

C Security

C1	Security provided to owner	30
C2	Security to owner by cash retention	30
C3	Security to owner by *unconditional guarantee	30
C4	Change to type of security to owner	31
C5	Owner's right to draw on security provided to it	31
C6	Procedure for owner to draw on security provided to it	31
C7	Owner's release of security on *practical completion	32
C8	Owner's release of security on *practical completion of separable part	32
C9	Owner's release of security on final certificate	32
C10	Security to owner for *off-site plant or material	33
C11	Release of security for *off-site plant or material	33
C12	Owner's right to draw on security for *off-site plant or material	33
C13	Procedure for owner to draw on security for *off-site plant or material	33
C14	Security provided to contractor	34
C15	Contractor's right to draw on security provided	34
C16	Procedure for contractor to draw on security	34
C17	Release of security provided to contractor	34

D Liability

D1	Risk before *practical completion	35
D2	Indemnity before *practical completion	35
D3	Risk after *practical completion	35
D4	Indemnity after *practical completion	36
D5	Reinstatement during period when contractor bears risk ..	36
D6	Separable parts – risk	36

E Insurance

E1	Public liability insurance	37
E2	Contract works insurance	37
E3	Separable parts – insurance	37
E4	Entitlement to *input tax credit	37
E5	Insurance cover	38
E6	Limited right to arrange insurances	38
E7	Contractor and owner not to affect insurance	38

E8	Worker's compensation and employer's liability insurances	38
E9	Insurance claims	39
E10	Payment of excess	39
E11	Contractor entitled to make progress claim as result of loss or damage	39
E12	Home indemnity insurance	39

F The site

F1	Owner to give contractor possession of the *site	40
F2	Contractor's obligations in relation to the *site	40
F3	Owner warrants that it has given contractor the *site information	40
F4	Contractor to examine the *site information	40
F5	If contractor discovers a *latent condition or *valuable item	40
F6	Architect to instruct in relation to a *latent condition or *valuable item	41
F7	Contractor to claim for *latent condition or *valuable item	41
F8	If contractor discovers *dangerous or contaminated material	41
F9	Encroachments	41

G Building the works

G1	Owner's obligations	42
G2	Contractor's obligations	42
G3	Contractor to appoint representative	42
G4	Subcontracting	42
G5	Contractor to give program to architect	42
G6	Contractor to give updated program	42
G7	Architect may instruct opening up or testing of the *works	43
G8	Contractor entitled to claim for cost of opening up or testing	43
G9	Architect may instruct amendment to program	43
G10	Contractor entitled to claim for program amendment	43
G11	Architect may instruct suspension of the *works	43
G12	Architect may instruct recommencement of the *works	43
G13	Contractor entitled to claim for suspension and recommencement of the *works	44
G14	Owner may use separate contractors for separate work	44
G15	Contractor's obligations in relation to separate contractor ..	44
G16	Contractor entitled to claim for act or omission by separate contractor	44
G17	When contractor entitled to unfixed or undemolished materials	44

H Claims to adjust the contract

H1	Time for making a *claim to adjust the contract	45
H2	Details required for claim	45
H3	Architect to assess claim	45
H4	Architect to give assessment	46
H5	Sum recoverable for claim for *adjustment of time costs	46
H6	Architect may adjust contract in absence of claim	46

J Variation to the works

J1	Architect may instruct *variation to the *works	47
J2	Contractor to review instruction	47
J3	Architect to instruct whether *variation is to proceed	48
J4	If contractor receives written instruction to proceed	48
J5	Adjustment to the contract after written instruction to proceed	48
J6	If *authorised person issues *official document	48
J7	Architect to give instruction	48
J8	Contractor entitled to claim for *official document	49
J9	Claim for *dangerous or contaminated material	49

Table of contents

K Adjustment of provisional and prime cost sums

K1	*Provisional and *prime cost sums included in contract.....	50
K2	Architect may instruct regarding *provisional or *prime cost sum	50
K3	Architect may instruct contractor to use particular person for *provisional or *prime cost sum	51
K4	Adjustment for *provisional or *prime cost sum	51

L Adjustment of time

L1	Causes of delay which entitle making a claim for adjustment of time with costs.....	52
L2	Causes of delay which entitle making claim for adjustment of time without costs	52
L3	Contractor to notify of delay	53
L4	Contractor to allow for delays	53
L5	Adjustment of provisional allowance for delays	53
L6	Overlapping delays.....	53

M Completion of the works

M1	*Practical completion	54
M2	Inspection by the contractor	54
M3	Notification to architect of *practical completion	54
M4	Architect to decide if the *works have reached *practical completion	54
M5	If the *works not at, but near, *practical completion	54
M6	If the *works not at, not near, *practical completion	55
M7	Contractor to bring the *works to *practical completion	55
M8	If architect fails to issue notice of *practical completion	55
M9	Division of the *works into separable parts before *practical completion	55
M10	*Practical completion of separable part	56
M11	Possession of the *works before *practical completion.....	56
M12	Liquidated damages may be payable.....	56
M13	Deduction of liquidated damages	56
M14	Contractor to correct *defects and finalise work.....	57
M15	If the contractor fails to correct *defects and finalise work.....	57
M16	Defects liability period	57
M17	Contractor's obligations during and after defects liability period.....	57

N Payment for the works

N1	*Contract price	58
N2	Owner's obligation to pay *contract price.....	58
N3	Progress claims – procedure for contractor	58
N4	*Off-site plant and material warranty	58
N5	Progress claims – procedure for architect	59
N6	*Tax invoice	59
N7	Certificates – obligation to pay.....	59
N8	Before making first progress payment.....	59
N9	If architect fails to issue certificate	60
N10	Contractor entitled to make claim	60
N11	Final claim – procedure for contractor	60
N12	Final certificate – procedure for architect	61
N13	Final certificate – *tax invoice	61
N14	Final certificate – obligation to pay.....	61
N15	Effect of final certificate.....	61
N16	Interest on overdue amounts.....	61
N17	Payment of *deposit	62
N18	Time for assessing *deposit.....	62

P Dispute resolution

P1	Each *party to continue to perform its obligations	63
P2	Compulsory conference.....	63
P3	Alternative dispute resolution.....	63
P4	Mediation	63
P5	Expert determination.....	64
P6	Arbitration	64
P7	Legal rights.....	64

Q Termination of engagement

Q1	Owner may require contractor to remedy default.....	65
Q2	Owner may immediately terminate.....	65
Q3	Owner may take possession of the *site	65
Q4	Assignment of contractor's rights.....	65
Q5	Owner may contract with others to complete the *works	65
Q6	Owner not bound to make further payment to the contractor.....	66
Q7	Owner may pay subcontractors or suppliers	66
Q8	Architect to give assessment of cost of completing the *works	66
Q9	Architect to give certificate of amount payable to contractor or owner	66
Q10	Contractor or owner to pay under clause Q9	67
Q11	Contractor may require owner to remedy default	67
Q12	Contractor may suspend if default not remedied.....	67
Q13	Contractor's subsequent right to terminate	67
Q14	Contractor may immediately terminate.....	67
Q15	Contractor's entitlement after termination.....	68
Q16	Procedure for contractor to make claim	68
Q17	Architect to give certificate	68
Q18	Contractor or owner to pay under clause Q17	68
Q19	If this contract is frustrated.....	68

R Miscellaneous

R1	Transmission of documents	69
R2	Time document is received	69
R3	Assignment.....	69
R4	Entire contract	69
R5	Contract to benefit successors and assignees.....	69
R6	Severability.....	70
R7	Waiver.....	70
R8	Governing law	70
R9	Compliance with law.....	70
R10	Change in *relevant legislation	70
R11	Interpretation of headings	70
R12	Contractor and owner to observe confidentiality.....	70
R13	Owner to pay any duty	70
R14	General interpretation.....	70

S Definitions

71

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: _____

Item 4
Clause N1
The **contract price*

**Cost of building work:* \$ _____

Plus **GST* \$ _____

**Contract price* \$ _____

Contract information – Schedule 1

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

Schedule 1 – Contract information

Item 13 Contract works insurance

Clause E2

Is the owner or the contractor to take out and maintain contract works insurance?

If nothing stated, the contractor

Item 14 Amount to cover fees of the architect and other consultants

Clause E5.1

*If nothing stated, 10% of the *contract price*

Item 15 Amount to cover cost of demolition and removal of debris

Clause E5.1

*If nothing stated, 10% of the *contract price*

Item 16 Amount of insurance for injury, illness, disease or death

Clause E5.2

If nothing stated, \$20,000,000.00

Item 17 Insurance excess

Clause E10

Clause E1: Amount of excess for public liability insurance:

If nothing stated, \$1,000.00

Clause E2: Amount of excess for contract works insurance:

If nothing stated, \$1,000.00

Item 18 Date by which the owner must give possession of the *site

Clause F1

Item 19 Quality assurance system

Clause G2.2

Item 20 Separate work by separate contractors

Clause G14

Separate contractor:

Separate work:

Contract information – Schedule 1

Item 21
Clause H2 Percentage for the contractor's overheads and profit _____ %
If nothing stated, 15%

Item 22
Clause H5 **Adjustment of time costs*

Stage of completion of the <i>*works</i> :	Sum per <i>*working day</i> (incl. <i>*GST</i>):

Item 23
Clause K4.2 Percentage of difference to be added to the **contract price* _____ %
If nothing stated, 10%

Item 24
Clause L1.1m Causes of delay which entitle **adjustment of time costs* for delays affecting **working days*
(causes not listed in clause L1.1 a – 1) _____

Item 25
Clauses L2, L4 Allowance for delay due to disruptive weather conditions _____ **working days*

Item 26
Clauses L2, L4 Other allowances for delay having regard to the nature of the contract and the **works* which do not entitle **adjustment of time costs*

Cause:	Allowance (<i>*working days</i>):

Schedule 1 – Contract information

Item 27 Date for **practical completion*

Clause M1

Item 28 Commissioning tests for **practical completion*

Clause M1

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				
2				
3				
4				
5				
6				

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 15th of the month

Item 33 Information to be included in a progress claim

Clause N3

Contract information – Schedule 1

Item 34 Interest rate on overdue amounts
Clause N16

%

If nothing stated, 10% per annum

Item 35 Official documents

Item 35a **Official documents* required to begin the
**works* but to be obtained by the contractor:

Item 35b **Official documents* required to complete the
**works* but to be obtained by the owner:

Item 36 **Deposit* provided by the owner

Item 36a Is the owner to provide give a **deposit* to the
Clauses N5, N17 contractor?

Yes

No

Strike out whichever doesn't apply

Item 36b If yes in item 36a, the amount of **deposit* is:
Clauses N5, N17

\$ incl. **GST*
If nothing stated, \$0.00

*Refer to Information Statement for maximum
deposit amounts permitted under the *Act*

*Dollar value must not be more than 6.5%
of the *contract price*

Clause B2

Contractor's Initials ABIC MW 2018 H WA

Owner occupier special conditions – Schedule 2b

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 the date 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 date 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 D1.4**.

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 of 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*.

Order of precedence – Schedule 3

6. All other documents described below:

Schedule 4 – Site information

The **site information* is:

Clause F3

Owner's initials_____

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;
- 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 5b – Forms of guarantee

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;
- 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

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 ;
- 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'.

Schedule 8 – Items to be supplied by the owner

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*):

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

Notice for the Home Owner - Schedule 9

Home Building Contracts Act 1991

NOTICE FOR THE HOME OWNER

This Notice

A builder must give a copy of this notice to you, as the owner, before you sign a contract for home building work that is covered by the *Home Building Contracts Act 1991*.

This notice explains relevant provisions of that Act as required by section 4(2). The Act itself should be referred to for the exact text. A copy of the Act can be obtained from the State Law Publisher (check the White Pages for the current address).

Who are “owners” and “builders”?

In this notice “owner” means the person for whom the home building work is to be done and “builder” means the person who, in the course of business, is to do the work or arrange for it to be done.

What the Act covers

The Act deals with contracts for home building work where the contract price is above \$7 500 and below \$500 000. The Act also applies to contracts, within that price range, for associated work (e.g. swimming pools, carports and landscaping) and for alterations. It makes some provisions that are implied in all contracts, and also states what is not allowed in any contract.

Under the Act a builder must not do anything in connection with a contract that is “unconscionable, harsh or oppressive”. Furthermore, neither you nor the builder may do anything that is “misleading or deceptive”.

The Act deals with “cost plus” contracts only to a limited extent — see later in this notice under “**Special rules for cost plus contracts**”.

You may seek appropriate redress through the Building Commissioner for breaches of the contract and the Act, including for unconscionable or misleading conduct — see later in this notice under “**Disputes**”. The builder’s rights are similar, but do not extend to any unconscionable behaviour by you.

A person can be prosecuted or fined for not complying with some provisions of the Act. Some of these provisions apply to owners as well as builders.

Rights conferred by the Act cannot be taken away, diminished or waived and it is forbidden to make any agreement or arrangement to by-pass the Act.

Home indemnity insurance

It is compulsory for all home building work except associated work alone (e.g. swimming pools, carports, pergolas and landscaping), the cost of which is above \$20 000, to be covered by home indemnity insurance.

Home indemnity insurance is also compulsory for associated work if that work is performed under a contract that includes construction or renovation of a residence and the total cost of all the building work is above \$20 000.

Before commencing work or demanding any payment (including a deposit) from you, the builder must take out home indemnity insurance and give you a certificate confirming the existence of the insurance cover.

There may be periods when a builder is exempt from the requirement to take out home indemnity insurance. During, and in some circumstances after, one of these periods a builder must give you a notice in a prescribed form.

Home indemnity insurance will protect you and any successive owners against financial loss due to the insolvency, death or disappearance of the builder that results in —

- (a) loss of deposit (up to a limit of \$20 000);
- (b) the non-completion of the building work; or
- (c) the failure to rectify faulty or unsatisfactory building work.

Home indemnity insurance generally does not cover an owner for any money paid in advance other than

Schedule 9 – Notice for the Home Owner

a deposit. In any event it is a breach of the Act for a builder to request and receive such a payment — see later in this notice under **“Provisions that are not allowed”**.

Note that, with building work carried out under a cost plus contract, the builder is required to take out home indemnity insurance to cover only the risk specified in (c) above — see later in this notice under **“Special rules for cost plus contracts”**.

Claims may be made under a home indemnity insurance policy at any time before the end of a period of 6 years after the day of practical completion of the building work.

Some home building work is exempt from the requirement to obtain home indemnity insurance. If your work is exempt your builder should give you a notice informing you that this is so. The Building Commission staff can provide you with further information in this respect.

Contract – steps to be followed

Everything agreed to between you and the builder must be set out in a written contract. The contract must be dated and signed by both you and the builder or your respective representatives. If this is not done you may terminate the contract — see later in this notice under **“Termination of contract”**.

You must be given a copy of the contract as soon as is practicable after it has been signed and before the building work starts.

It is the builder's duty to see that all these steps are taken.

Special rules for cost plus contracts

A “cost plus” contract is one under which the builder is entitled to recover actual costs incurred plus an extra amount for profit. A costs plus contract —

- (a) must be headed “cost plus contract”; and
- (b) must contain a statement in which both you and the builder acknowledge that it is a cost plus contract and that the Act does not apply to it, except in relation to the requirement for a builder to take out home indemnity insurance in the situation explained just below.

If the contract does not comply with these requirements you may terminate the contract — see later in this notice under **“Termination of contract”**.

As mentioned above, the Act does not in general apply to a cost plus contract. However, if you have a complaint about the building work carried out under such a contract, you can apply to the Building Disputes Tribunal under the Builders' Registration Act for an order that the builder rectify the work or pay a sum of money for failing to rectify the work — see later in this notice under **“Disputes”**.

The builder is required to take out home indemnity insurance in relation to a cost plus contract to cover you and any successive owner against financial loss where an order made by the Building Disputes Tribunal under the Builders' Registration Act is not enforceable due to the insolvency, death or disappearance of the builder.

Provisions that are not allowed

The builder cannot include in a contract a requirement for you to make a payment other than —

- (a) a deposit before the work begins of no more than 6.5% of the contract price; and
- (b) progress payments after the work begins for work done or goods supplied.

If any such provision is included you may terminate the contract — see later in this notice under **“Termination of contract”**.

The builder may also be prosecuted and fined for demanding, or receiving, any payment after the work begins other than a progress payment as set out in (b) above.

The builder must not include provisions in the contract that are “unconscionable, harsh or oppressive”. If you think this has occurred, you may refer the matter to the Building Commissioner — see later in this notice under **“Disputes”**.

Notice for the Home Owner - Schedule 9

Prime cost/Provisional sum

Where a contract refers to “prime costs” it means fittings or equipment that may vary in price (e.g. bathroom tiles). The builder must estimate the cost of such items at or above the lowest amount that they could reasonably cost and the cost must not be understated in the contract. If it is, the builder may be prosecuted and fined. This also applies to estimates for “provisional sums” such as site works.

Contract price must be fixed

A contract must not contain a “rise and fall” clause. A rise and fall clause allows the builder to pass on price increases for labour or materials that occur after the contract is signed.

However, the builder can include a clause in the contract that allows for a price increase to cover an increase in actual costs that results from —

- (a) government taxes or charges increasing after the contract is signed;
- (b) the builder having to comply with a State or Commonwealth law; or
- (c) work not starting within 45 working days after the contract is signed if the delay is not caused by the builder.

If (c) applies and the price rise is more than 5%, you may terminate the contract within 10 working days of receiving written notice of the increase — see later in this notice under “**Termination of contract**”. You can also choose to apply to the Building Disputes Tribunal within this period to assess whether the price rise is justified.

Varying the contract

1. Steps to be followed

All changes to the building work to be carried out under a contract, including the cost of the change, must be put in writing and be dated and signed by both you and the builder or your respective representatives.

A copy must be given to you as soon as is possible after both you and the builder have signed, and before the start of the work that results from the change.

The builder must ensure that these steps are taken.

2. Exceptions

Certain changes may be made without these steps being taken, namely —

- (a) changes resulting from directions given by a building surveyor or other person acting under a written law;
- (b) changes arising from unforeseen circumstances (but this does not include unforeseen labour or material cost increases).

Note also the changes by way of price increase that are referred to above under the heading “**Contract price must be fixed**” and below under the heading “**Where approvals are delayed**”.

3. Protection that you have as an owner

If any change referred to in paragraph (a) or (b) immediately above occurs, the builder must give you certain information in writing — see section 8(1), (2) and (3) of the Act. Note that, if you and the builder have a dispute about whether particular circumstances are “unforeseen circumstances” and you wish to apply to the Building Commissioner, you must do so within 10 working days after this information is given to you.

Where approvals are delayed

A contract is conditional on —

- (a) a building licence and the Water Corporation’s approval being obtained within 45 working days from the date of the contract; and
- (b) the written acceptance within that period by both you and the builder of any condition attached to the building licence or the Water Corporation approval that will vary the contract.

Schedule 9 – Notice for the Home Owner

Note that contracts that are only for associated work (e.g. swimming pools, carports and landscaping) are not subject to these conditions.

Both you and the builder must do what you reasonably can to ensure that these conditions are met. If they are not met, the rights of the parties depend on whose fault it was that the condition was not met within the 45 day period.

Builder at fault	Owner at fault or neither or both parties at fault
Contract remains in force on the same terms and conditions unless you and the builder agree otherwise.	Contract remains in force on the same terms and conditions until you and the builder agree, agree otherwise but —
	(i) the builder may by written notice increase the contract price;
	(ii) if the increase exceeds 5% you may terminate the contract within 10 working days after receiving the notice provided you compensate the builder for all reasonable costs incurred up to the date of termination — see below under "Termination of contract";
	(iii) you may apply, within 10 working days after receiving the notice, to have the increase reviewed by the Building Disputes Tribunal.

Defects – making good

Any defect in work done or materials supplied under a contract must be made good by the builder if the builder is notified of the defect within 4 months (or a greater period if provided for in the contract) after practical completion of the building work.

However, you and the builder may agree in the contract that particular defects are excluded from this provision.

Inspection

A builder must not prevent you (or a person authorised in writing to represent you) or your lending institution from inspecting the building work as allowed by the contract or by regulations under the Act. A contract cannot restrict inspections except by limiting them to normal working hours or forbidding inspections that would unreasonably impede or interfere with the building work.

Termination of contract

In various places above it is stated that you can terminate the contract for a particular reason. To do this you must give notice in writing to the builder before the building work is finished.

If a contract is terminated, the Building Commissioner can make financial adjustments between you and the builder.

Disputes

1. Contracts generally

You can make a complaint to the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011* if there is a dispute between you and a builder about a contract that falls within the Act. Such a complaint to the Commissioner must be made within 3 years from when you became entitled to take legal action.

There are monetary limits on orders that can be made under that Act. The limits are \$100 000 if an order is made by the Building Commissioner and \$500 000 if the order is made by the State Administrative Tribunal following a referral by the Building Commissioner.

Notice for the Home Owner - Schedule 9

2. *Standard of services*

You can make a complaint to the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011* about certain building services not being carried out in a proper and proficient manner or being faulty or unsatisfactory.

Such a complaint to the Commissioner must be made within 6 years from the time the building service is completed. The building service is completed —

- (a) if the building service is carried out under a building permit, when a notice of cessation or a notice of completion in relation to the permit has been given to the relevant permit authority;
- (b) otherwise, on the date on which the building service was last carried out.

There are monetary limits on orders that can be made under that Act. The limits are \$100 000 if an order is made by the Building Commissioner and \$500 000 if the order is made by the State Administrative Tribunal following a referral by the Building Commissioner.

3. *Procedure*

Before you make a complaint to the Building Commissioner about a contract that falls within this Act, written notice that you propose to make a complaint must be given to the other party together with a description of the remedy that you propose to seek and the evidence on which you propose to rely. You must provide a copy of that notice to the Building Commissioner at the time of making a complaint.

Advice on how to make a complaint to the Building Commissioner and related matters may be obtained from Building Commission staff or from the Building Commission's website at www.buildingcommission.wa.gov.au.

A Overview

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 under **clause A7**, 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 work health and safety legislation (**WH&S legislation**) requires it, the contractor:
 - a acknowledges that the owner has engaged and appointed it under the WH&S legislation as the principal contractor for the **works* and
 - b will discharge the responsibilities imposed on it as the principal contractor under the WH&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 warrants that:
 - a the **works* will be performed in a proper and workmanlike manner and in accordance with the contract
 - b it will supply materials that are of merchantable quality and reasonably fit for the purpose for which the owner required the **home building work* to be performed.

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 The owner warrants that:
 - a prior to its execution of this contract a building licence has been issued and
 - b it is lawful under the **Water Act* for the **works* under this contract to commence.
- .5 If relevant work health and safety legislation (**WH&S legislation**) requires it, the owner:
 - a appoints the contractor as the principal contractor for the **works* as defined in the WH&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 WH&S legislation.
- .6 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 A5.6** does not apply and is of no effect.
- .7 A notice given under **clause A5.6** 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*, if the architect identifies the instruction as urgent, and:
 - a can demonstrate that the circumstances are urgent or
 - b receives 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
 - c 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*.
- .4 If the contractor notifies the architect that it considers the **urgent instruction* to be an instruction for a **variation*, the architect is not obliged to confirm the **urgent instruction* in writing and 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.

A Overview

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.

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 Building licence conditions

- .1 By executing this contract, the contractor and the owner acknowledge that they:
 - a are deemed to have accepted any conditions to the building licence and
 - b agree to accept any direction in connection with carrying out the **works* that may be given under **clause J6** by a licensee under the **Water 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

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

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 Home indemnity insurance

- .1 If required by the **Act*, the contractor must:
 - a take out and maintain a policy of **home indemnity insurance* which complies with the **Act* and
 - b provide the owner in accordance with the **Regulations* a copy of the required **home indemnity insurance* documents.

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 item* 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 item* 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 If contractor discovers **dangerous or contaminated material*

- .1 If the contractor discovers on the **site* any **dangerous or contaminated material*, it must immediately notify any **relevant authority* and the architect.
- .2 The contractor must take all necessary action in accordance with an **official document* in relation to the **dangerous or contaminated material* and copy the document to the architect immediately. **Clauses J5, J7 and J8** do not apply in relation to this **clause F8**.
- .3 The contractor is only entitled to make a **claim to adjust the contract* that results from complying with an **official document* in relation to **dangerous or contaminated material*, if the presence, disturbance or release of the **dangerous or contaminated material* was beyond the contractor's control.
- .4 The requirements for making a **claim to adjust the contract* and the procedures to be followed are stated in **section H**. If the **claim to adjust the contract* is in relation to an **official document*, the requirements for making the claim are stated in **clause J9**.

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 and
 there 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

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 work 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 materials 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.
- .4 If the claim results from discovery of **dangerous or contaminated material* and **subclause F8.3** applies, the contractor must **promptly* notify the architect of its intention to make a claim, and submit the detailed claim within a time agreed in writing between the contractor and the architect, or if no time is agreed, within 20 **working days* after completion of the **necessary work* required by the **official document*.

H2 Details required for claim

- .1 A **claim to adjust the contract* must contain the following details:
 - a identification of the architect's instruction, or a copy of the **official document* in relation to **dangerous or contaminated material* 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*
 - g any **adjustment of time costs* associated with the claim and

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

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**.

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 where **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 one or more of the following:
 - a a detailed quotation for the whole 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 from the architect if it considers that a **variation* may be required. A request by the contractor under this clause must be in writing and state:
 - a the reason for and scope of, the **variation*
 - b its effect on the date for **practical completion*
 - c 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 If the contractor receives an **official document* in relation to **dangerous or contaminated material* which requires a **variation*, **clause J9** applies.

J2 Contractor to review instruction

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

J Variation to the works

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

- .1 Within 5 **working days* after receiving notification under **subclause J2.3**, the architect must:
 - a instruct the contractor in writing that the **variation* will not proceed or
 - b issue a further instruction to the contractor to proceed with the **variation*, nominating any quotation or estimate that is accepted 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 **clause 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 any effect on the date for **practical completion*.

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 **variation* work 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.
- .2 If an **official document* is in relation to **dangerous or contaminated material*, **clause F8** applies.

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*.
- .2 The architect's instruction must be either an instruction in accordance with **subclause J1.2** or state that it is an **urgent instruction* given 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** where 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**.

J9 Claim for **variation* for **dangerous or contaminated material*

- .1 If the contractor receives an **official document* under **clause F8** which requires a **variation* to the **works*, the contractor must immediately notify the architect and comply with the **official document*.
- .2 The contractor may only make a **claim to adjust the contract* if the circumstances giving rise to the issue of the **official document* requiring a **variation* were beyond the contractor's control, and within 14 days of receiving the **official document*, the contractor:
 - a notifies the architect of its intention to make a claim
 - b submits to the architect a statement of the reason for the cost which has or will be incurred by the contractor as a result of receiving the **official document*
 - c (if the **variation* required has been completed within the 14 days), maintains records of the cost of carrying out the **variation* and the effect, if any, on the date for **practical completion* and any costs claimed for that effect on the date for **practical completion*, and submits them to the architect or
 - d (if the **variation* has not been completed within the 14 days, or is unlikely to be), notifies the architect in writing of the cost for the **variation* which will be incurred by the contractor on account of the **official document* and the effect, if any, on the date for practical completion, including costs claimed for that effect on the date for **practical completion*.
- .3 If the contractor complies with requirements of **subclause J9.2**, the **contract price* will be adjusted in accordance with the contractor's statement of the costs incurred, or the cost that will be incurred in carrying out the **variation*, as the case may be. Nothing in this **clause J9** prevents the owner exercising rights under the **Act* in relation to the cost of the **variation*.

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 item of material or equipment, the precise identity of which was not known or had not been specified at the date of the contract or,
 - b an allowance for payment of a fee or charge to a **relevant authority*.
- .3 The contractor agrees that it has made adequate allowance in the **cost of building work* for the scheduled **provisional sums* and **prime cost sums* including, but not limited to, its preliminaries, overhead and profit.
- .4 The contractor agrees that the 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 item of material or equipment or
 - d the amount of a fee or charge to a **relevant authority*,excluding any margins for preliminaries, overheads, profit or **GST*. 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 item 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 if **clause F8** applies, a delay in relation to **dangerous or contaminated material*, including any reasonable suspension of **necessary work*
 - m 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 **working 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**.
- .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 **items 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** 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*.

M Completion 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*.
- .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*. The owner must give the contractor access to the **site* (or that separable part of the **works* as applicable) for the duration of the defects liability period for the purpose of the contractor fulfilling its obligations under **clause M17**.
- .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 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. The claim is not a **tax invoice*.
- .2 The claim must set out the contractor's valuation of:
 - a the work completed
 - b materials and equipment delivered to the **site* for incorporation in the **works*, provided title has passed to the contractor
 - c subject to **clause C10**, the value of **off-site plant or material*all in relation to the **cost of building work*, as adjusted, up to and including the day of the claim.
- .3 The claim 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.

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 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 if **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 The certificate must identify the amount of **GST* that has been included and the architect must give written reasons for any difference between the **cost of building work* amount certified and the (**GST* exclusive) amount claimed.
- .4 If the architect reasonably needs additional information to assess the claim, the architect must **promptly* ask the contractor for it. If 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**.

N Payment for the works

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.
- .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.

N Payment for the works

N17 Payment of **deposit*

- .1 If the owner is required by **item 36a** 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 36a** 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 36b** 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

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 one of the alternative dispute resolution methods set out in **clause P4, P5 or P6**.
- .2 Alternative dispute resolution by one of the methods in **clause P4, P5 or P6** provided in this contract is only available if:
 - a a written proposal suggesting one or more method is delivered by at least one **party* within 15 **working days* after a dispute notice is delivered
 - b the **parties* agree in writing on one alternative dispute resolution method within 20 **working days* after a dispute notice is delivered and
 - c the **parties* commence the agreed alternative dispute resolution method's procedure within 25 **working days* after a dispute notice is delivered.
- .3 If the **parties* fail to comply with **subclause P3.2**, either **party* may begin any legal proceedings available to it.

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 Western Australia, 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.

P Dispute resolution

P5 Expert determination

- .1 After written agreement under **clause P3** to have an expert determine the dispute or difference, and within 25 *working days* after a dispute notice under **clause P2** is delivered, the *parties* must agree in writing on the identity of the expert, 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 Western Australia, nominates the expert.
- .2 The expert must not act as an arbitrator and, as a condition of appointment, the expert must agree to issue a written decision within 10 *working days* after the expert's appointment, unless the *parties* agree in writing to a longer period.
- .3 Subject to **subclauses P5.2** and **P5.4**, any expert determination is to be conducted in accordance with the Expert Determination Rules of the Resolution Institute.
- .4 The decision of the expert is not subject to review under this contract. If a *party* disputes the decision of the expert it may begin any legal proceedings available to it.

P6 Arbitration

- .1 After written agreement under **clause P3** to arbitrate the dispute or difference, and within 25 *working days* after a dispute notice under **clause P2** is delivered, the *parties* must agree in writing on the identity of the arbitrator 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 Western Australia, nominates the arbitrator.
- .2 Subject to **subclause P6.1**, any arbitration is to be conducted in accordance with the IAMA Arbitration Rules of the Resolution Institute.
- .3 The decision of the arbitrator is not subject to review under this contract. If a *party* disputes the decision of the arbitrator it may begin any legal proceedings available to it.

P7 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.

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 contract
 then 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.

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.

Q Termination of engagement

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

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 Western Australia 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>Home Building Contracts Act 1991</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 clause L1
<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 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 Western Australia
<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 schedule 2 , the conditions of this contract, the specifications, the drawings and any other documents shown in schedule 3
<i>contract price</i>	see clause N1
<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 clause L4
<i>dangerous or contaminated material</i>	material hazardous to persons or to the environment at or above the <i>*investigation or screening level</i> of the <i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i> and which is not anticipated in the <i>*contract documents</i> – see clause F8
<i>defect or defective work</i>	work that is: <ul style="list-style-type: none"> a in breach of any of the warranties set out in the <i>*contract documents</i> b not in accordance with the standard or quality of building work specified in the <i>*contract documents</i>
<i>deposit</i>	a part-payment towards the <i>*contract price</i> inclusive of <i>*GST</i> payable in accordance with clauses N17, N18 and item 36 of schedule 1
<i>detailed records</i>	see clause J4
<i>GST</i>	goods and services tax levied under the <i>*GST Act</i>
<i>GST Act</i>	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
<i>home building work</i>	the meaning given under section 3(1) of the <i>*Act</i>
<i>home indemnity insurance</i>	insurance required under Part 3A of the <i>*Act</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>

S Definitions

<i>insolvency event</i>	<p>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:</p> <ul style="list-style-type: none"> a the person is declared, made or becomes insolvent b an execution or distress process is levied against the person's assets which include the person's income c the person enters into a deed of company arrangement with the person's creditors d the person fails to comply with a bankruptcy notice or a statutory demand served under the corporations law e a provisional liquidator, liquidator, receiver, receiver and manager, administrator, scheme administrator, controller or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets f a trustee in bankruptcy, interim receiver, controlling trustee or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets.
<i>investigation or screening level</i>	has the same meaning as in the <i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i> .
<i>latent condition</i>	see clause F5
<i>necessary work</i>	all work including any temporary work necessary to complete the <i>*works</i>
<i>non-working days</i>	statutory public holidays and rostered days off and recognised industry shut-down periods in Western Australia
<i>official document</i>	see clause B3
<i>off-site plant or material</i>	see clause C10
<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>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 clause M1
<i>prime cost sum</i>	see clause K1
<i>promptly</i>	as soon as practicable
<i>provisional sum</i>	see clause K1
<i>Regulations</i>	<i>Home Building Contract Regulations 1992</i>
<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 item 6 of schedule 1)
<i>site information</i>	see clause F3
<i>tax invoice</i>	an invoice for payment complying with the requirements of the <i>*GST Act</i>
<i>unconditional guarantee</i>	see clause C3
<i>urgent instruction</i>	see clause A7
<i>valuable item</i>	see clause F5
<i>variation</i>	see clause J1
<i>Water Act</i>	<i>Water Services Act</i> 2012
<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 item 5 of schedule 1).