

BASIC WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



MASTER BUILDERS
AUSTRALIA

ABIC BW 2018 C Commercial Basic Works Contract User Guide

Disclaimer:

While the publishers have attempted to make the information and advice in this User Guide as accurate as possible, the material is for guidance and educational use only and is provided in good faith without any express or implied warranty. There is no guarantee given as to the accuracy or currency of any of the material. Persons who require confirmation of any information or guidance in specific circumstances should refer to the provisions of the contract and, where doubt exists, or for best practice, legal advice should be sought. The publishers do not accept responsibility for any loss or damage occasioned by use of the information or guidance contained in this [User Guide]. While the publishers have made every effort to ensure the integrity and accuracy of this resource, reliance on its terms is at the risk of the user and does not substitute for the terms of the contract as applied in particular circumstances.

ABIC BW 2018 C

BW 2018 Commercial Basic Works User Guide

This user guide has been jointly prepared by the Institute and Master Builders to assist in understanding the administration of the ABIC BW 2018 C Commercial Basic Works contract.

The guide goes beyond assisting with an understanding of the meaning of the clauses in the contract. The administration processes are clearly explained. Advice is also included on the preparation of tender and contract documents, on completing the schedules, and on when and where to use each administration template form.

Step-by-step instructions and flow charts describe the processes to follow when dealing with claims and other matters that arise during the construction process.

Table of contents	Page
Introduction	1
Contract Versions.....	2
Time limits in the contract	4
Schedule 1 – Contract information	7
Schedule 2 – Special conditions	8
Template forms	8
Section A – Overview.....	9
Section B – Documents.....	10
Section C – Security	11
Section D – Liability.....	12
Section E – Insurance	13
Section F – The site	14
Section G – Building the works	15
Section H – Claims to adjust the contract.....	16
Section J – Variation to the works	17
Section K – Adjustment of provisional and prime cost sums.....	18
Section L – Adjustment of time.....	20
Section M – Completion of the works and Liquidated damages.....	21
Section N – Payment for the works	24
Section P – Dispute resolution	26
Section Q – Termination of engagement	27
Sections R & S – Miscellaneous and Definitions.....	29
List of Forms	30

The Australian Building Industry Contracts (ABIC) are jointly published by Master Builders Australia Ltd (**Master Builders**) and the Australian Institute of Architects (**Institute**). They are intended for use in building projects where an architect administers the contract.

Why use the ABIC contracts?

ABIC contracts are designed to make contract administration clear and less prone to dispute or time-consuming negotiation. Promptly resolving claims and other issues that arise under building contracts, at the time that they arise, is an effective way of avoiding disputes on construction projects. ABIC contracts bring certainty to the process, requiring timely presentation and resolution of claims. They have been extensively refined and field-tested and feature:

- plain English and a clear, logical structure that reflects the sequence of the construction process;
- equitable allocation of virtually all project risks to one party or the other, eliminating uncertainty and many potential disputes;
- an integrated suite of versions for major, simple and basic works, and for housing and non-housing projects; and
- inclusion of a number of detailed supporting documents, including this user guide and template notices and certificates for the architect and the contractor.

The ABIC contract suite comprises a standard contract for non-housing work, as well as state and territory specific contracts for housing work, which meet legal and consumer protection requirements of state and territory housing legislation.

This user guide does not cover the housing 'H' versions of the BW contract. There are separate user guides for the MW and SW contracts.

How to use this User Guide?

This user guide covers each section of the contract outlining the processes for dealing with particular issues. As much as possible, these processes reflect the typical building sequence in which the issues are faced by the parties.

The guide provides relevant commentary on each section, and supplements it with charts and tables that summarise processes required by the contract. The charts identify the relevant clause numbers and forms to be used. There is a list of all template forms at the end of the guide.

The user guide is not intended to be a substitute for reading the contract.

The Institute and Master Builders have together prepared this user guide to assist in understanding the contract. Practical guidance is published by the Institute for architects' use and each Master Builders' office provides its members with advice about local domestic requirements.

For further information, please contact:

Master Builders Australia Ltd
Level 3
44 Sydney Avenue
FORREST ACT 2603
T (02) 6202 8888 F (02) 6202 8877
E enquiries@masterbuilders.com.au
W www.masterbuilders.com.au

Australian Institute of Architects
Level 1
41 Exhibition Street
MELBOURNE VIC 3000
T (03) 8620 3877 F (03) 8620 3864
E knowledge@architecture.com.au
W www.architecture.com.au

Contract Versions

When to use BW?

There is no specified project type, value or threshold that applies to this contract form. Whether to use the BW, SW or MW contract depends on the circumstances and the complexity of your project, which determines whether you need the particular form. BW is a short-form contract designed to fit with projects where a great deal of the information about the project would be pre-filled and tenders sought on the material in **Schedule 1**. It does not have the following elements which are contained in the MW form:

- × urgent instructions
- × separable parts to the works
- × change of type of security given by the contractor to the owner
- × provision of security for payments for off-site plant and materials
- × provision by the owner of security to the contractor
- × dangerous or contaminated materials
- × encroachments
- × quality assurance systems
- × separate contractors
- × amendments to programs and the consequences of any amendments

Improvements from BW 2002 to 2018

The BW 2018 has both new and improved provisions over the 2002 issue. The 2002-issue contracts can still be used and administered, however, the ABIC authors recommend all new projects use the 2018 revised issue.

New Provisions in BW 2018:

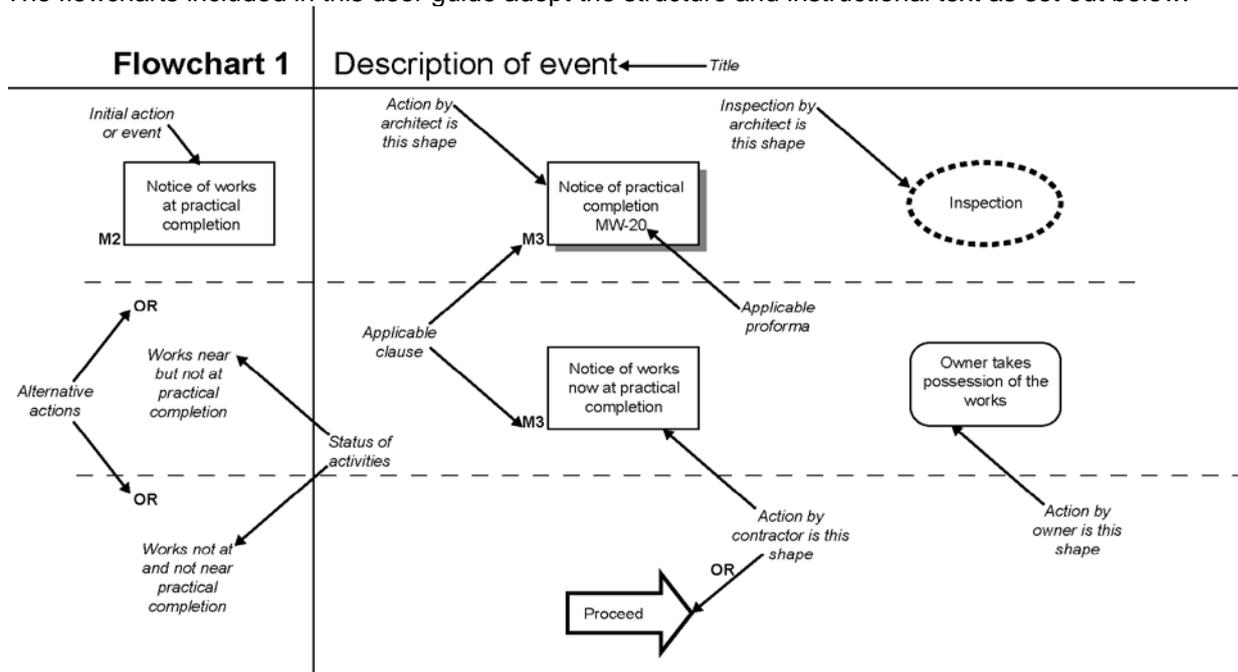
- Owner-supplied unfixed materials
- Trade charge-out rates for adjustments of the contract price

Improved provisions in BW 2018:

- Schedule 1: Contract Details
- Public Liability and Contract Works insurance
- Disputing architect's failure to act

Flowcharts

The flowcharts included in this user guide adopt the structure and instructional text as set out below.



Time limits in the contract

The contract provides a number of critical times. Working days, non-working days, business days and the term 'promptly' are defined in **section S** of the contract:

A working day is Monday to Friday, excluding non-working days.

Non-working days are public holidays, "rostered days off" (RDOs) and recognised industry shut down periods, such as over January.

Business days are any days other than a Saturday, Sunday or public holiday.

Promptly means as soon as practicable.

Critical times

Clause	Event	Architect/Owner	Contractor
A2.1a	Begin works		Within 10 working days after possession of the site
A4.2	Inform architect and contractor of change to financial position	Immediately	
A4.5	Inform architect and owner that owner's materials don't or will not comply with the Building Code	Promptly after becoming aware	
A6.1	Dispute architect's certificate, written decision	Within 15 working days of receiving certificate, notice or decision/assessment	Within 15 working days after receiving certificate, notice or decision/assessment or becoming aware of failure
A6.3	Assess notice under A6.1	Architect to assess within 10 working days and give a written decision to each party	
A7.1	Dispute architect's failure to issue document	Promptly after becoming aware of failure to issue	As soon as practicable after becoming aware of failure to issue
A7.2	Assess notice under A7.1	Architect to assess within 10 working days and give a written decision to each party	
B1.1	Notify architect in writing of discrepancy etc in documents	Promptly	Promptly
B1.2	Issue instruction to resolve discrepancy etc in the documents	Promptly	
B3.3	Supply copies of official documents	Promptly	Promptly
C4.2	Release 50% of security	On issue of notice of practical completion	
C5.1	Release of remaining security	On issue of final certificate	
E1.1	Effect insurance to cover indemnities in Clauses D1.2, D1.3 and D1.4		From possession of the site until 4:00pm on day final certificate issued
E3	Maintain workers compensation and employer's liability insurance		Until final certificate is issued
F1.1	Give possession of the site	From 10 working days after owner is satisfied insurances are in place and contract is executed and a copy given to the owner	
F3.1	Give all relevant site information	At least 5 working days before the close of tenders	
F5.1	Notify and seek instructions due to latent condition		Within 5 working days of discovery

Time limits in the contract

Clause	Event	Architect/Owner	Contractor
F6.1	Give instruction regarding latent condition	Promptly after receipt of notice	
H1.1a	Notify architect of intention to make time/cost claim		Promptly after receiving instruction or on becoming aware of event
H1.1b	Submit detailed claim		Within the time agreed, or within 15 working days of receiving instruction or becoming aware of event
H1.2	Where claim results from delay in the progress of the works		Within 15 working days after the delay ends.
H3.1	Assess the time/cost claim	Promptly	
J1.1	Give written instruction for variation	Any time before date of practical completion	
J1.2	Provide a detailed estimate or quotation		Within 10 working days or longer if stated in the instruction
J2.2c	Carry out instruction for variation if no time/cost implications		Promptly
J2.3c and J2.4	Notify architect of time/cost implications of variation		Promptly unless instruction received under clause J1.2 in which case within 10 working days
J3.1	Instruct whether variation is to proceed or not	Within 5 working days of receiving information or the contractor's notification	
J3.2	Proceed with variation		Promptly
J4.1	Notify architect of official notice which requires a variation and seek instruction		Promptly
J4.2	Give written instruction regarding official notice	Promptly	
M1.1	Bring works to practical completion		By the date shown in item 8 of schedule 1
M1.3	Meet on site to undertake joint inspection	Within 5 working days after the contractor's notice	
M1.5	Architect decides works have reached practical completion	Within 2 working days after completing the inspection	
M1.6	Owner takes possession of the works	4:00pm on the date the notice of practical completion is issued.	
M2.2	Issue notice of practical completion if owner has taken possession before practical completion	Within 2 working days of written advice that owner has taken possession	
M4	Correct defects or finalise incomplete work		Within 10 working days after receiving instruction
N3.1	Submit one claim at each of the stages for progress claims		Per Item 10 of Schedule 1
N4.1	Claim for final payment		At end of defects liability period and when all defects rectified and incomplete work finalised
N5.1	Issue progress payment certificate	Within 10 business days after receipt of claim	
N7.1	Payment of the amount of first certificate		Insurances taken out by the contractor must be in place

Time limits in the contract

Clause	Event	Architect/Owner	Contractor
N7.2	Pay amount shown as owing in the certificate	Within 5 working days after delivery of certificate and tax invoice	Within 5 working days after delivery of certificate and tax invoice
P2.1a	If a dispute or difference arises and written notice is delivered	Meet within 5 working days after the dispute notice is delivered	Meet within 5 working days after the dispute notice is delivered
P2.1b	If a dispute or difference is not resolved within 10 working days after the dispute notice is delivered	May agree in writing to proceed to mediation	May agree in writing to proceed to mediation
Q1.1	Contractor to remedy default or show cause		10 working days
Q1.2	Terminate due to contractor default	10 working days after notice	
Q1.3	Terminate due to insolvency event	Immediately	
Q5.1	Assess costs to the owner of completing the works	Promptly after termination	
Q5.2	Prepare payment certificate	Promptly after assessment under Q5.1	
Q6.1	Owner to remedy default or show cause	10 working days after notice	
Q6.2	Terminate due to owner default		Immediately on written notice
Q6.3	Terminate due to insolvency event		Immediately on written notice
Q6.5	Submit a claim setting out contractor's entitlement on termination		Promptly
Q7.1	Assess contractor's claim following termination	Promptly	

Document Preparation

At least two copies of all contract documents must be prepared to give each party an original, fully executed set of the contract documents. To administer the contract, the architect must have a copy of the contract documents identical to the executed copies, so either 3 copies can be prepared for signing, or one party's executed copy can be copied in entirety for the architect to use. In this instance it is likely to be the copy provided to the contractor that is the signed copy of the contractor's tender which brought the contract into effect.

The parties must fill out the details of the project in **schedule 1** of the contract. **Schedule 1** is available digitally in Word format from the Australian Institute of Architects' Acumen online and from Master Builders Australia.

Digital Signing

Signing the documents digitally or exchanging digital copies by email is an acceptable method that can make the contract legally binding. There is now state and federal legislation (e.g. the *Electronics Communications Acts*) that permits and facilitates legally-effective actions done under a contract.

Details of the information to be inserted in **schedule 1**, and the places in which the contract and contract documents may need to be signed or initialled are set out below:

Item 1 – Key details and Signing

The owner and the contractor sign the contract at **item 1**. The parties can still sign as the appropriate legal entity that is entering into the contract, e.g. as an individual or a company. We recommend that each party initial each page of the contract, at the bottom in the space provided and at a minimum, on the first 2 pages where the contract information is inserted (including each page of the specifications and each page of drawings).

The coming into effect of the contract will be evidenced by another document i.e. the document where the owner accepts the contractor's tender. However, it is recommended that **schedule 1** be executed to put the applicable contractual terms beyond doubt.

Item 7 in **schedule 1** must be signed by the contractor.

Each party must give their contact addresses and details, their ABN, if applicable, and nominate a representative. The owner must identify its lending institution, if applicable. The owner's details are likely to be pre-filled as part of the tender. The contractor must give its licence or registration number.

Item 2 – The architect

The architect must give address and contact details, Board registration number and identify its representative who will administer the contract. These details are likely to be pre-filled as part of the tender.

Schedule 2 – Special conditions

Item 3 – Special conditions

In **item 3**, the parties need to say whether there are any special conditions. Where there are special conditions, the 'No' option must be struck out and the special conditions must be set out in **schedule 2**. These are likely to form part of the tender. If there are no special conditions, we recommend you write "None" in **schedule 2** for additional clarity.

Note: This version of the BW 2018 contract is not suitable for use for domestic building projects in each state and territory where the specific domestic building legislation applies.

Template forms

The back of this user guide lists the template forms available for use by the architect and the contractor when using this contract. The architect's and contractor's forms are available in editable, digital format for purchase and download from the Institute and Master Builders

Key points

- This section sets out the general obligations of the contractor and the owner.
- The architect is appointed to administer the contract.
- The architect may give an instruction at any time.
- A party may dispute the decision of an architect.
- A party may dispute the architect's failure to act.

Guidance

Under **clause A1**, the parties agree to the concept of cooperative contracting to facilitate the efficient running of the project. This concept includes requirements that the owner and the contractor act reasonably, cooperate in all matters and avoid obstructing the other.

Clauses A2, A3 and A4 set out the specific obligations and warranties given by the contractor and the owner.

A party can dispute a decision of the architect under **clause A6**. To do so, the party must give the architect written notice of the dispute within 15 working days of the date of the decision. The architect has to assess the party's written notice and give a written decision within a further 10 working days. If a party wishes to dispute the decision, the dispute resolution procedures in **section P** apply.

If a party does not give the architect written notice in time, the party is not entitled to dispute the matter under the contract.

A party can also dispute an architect's failure to do something the architect was required to do under the contract under **clause A7**. To do so, that party must give the architect written notice as soon as practicable after becoming aware of the failure of the architect to do something they are required to do under the contract. We recommend that the parties are familiar with the timeframes for doing certain things under the contract, so they can remain aware of instances the architect may not have done or issued something within the relevant timeframe. As with **clause A6**, a party may dispute the architect's written decision given under **clause A7.2**, or if no such decision is given, the dispute resolutions procedures in **section P** apply.

Architect's forms

BW-10 Architect's instruction

Contractor's forms

BW-57A Notice of dispute (acts done)

BW-57B Notice of dispute (failure to act)

Section B – Documents

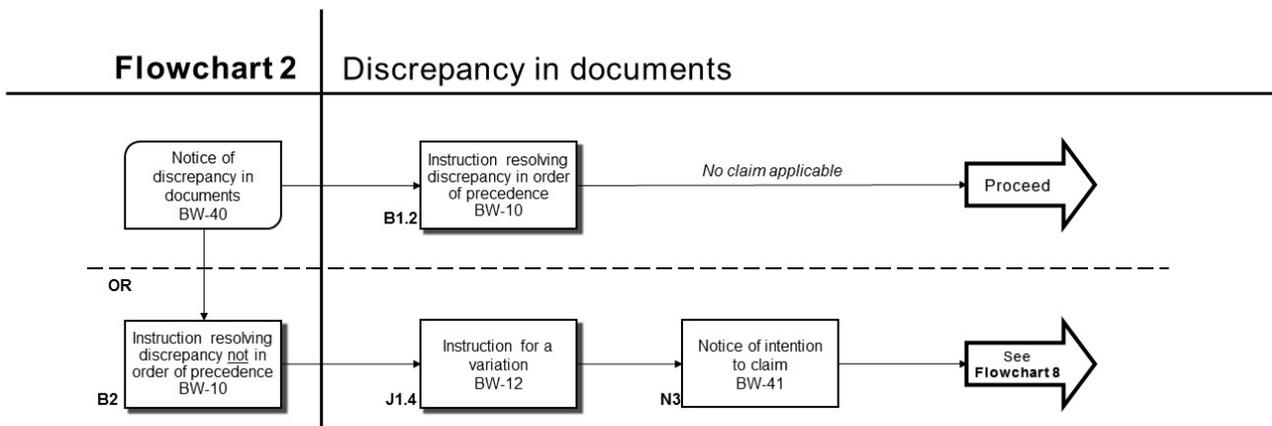
Key points

- How to resolve a discrepancy or omission in the contract documents.
- How to deal with an official document relating to the works.
- Both parties and the architect must act promptly.

Guidance

Clause B1 sets out the requirement for the owner or the contractor to notify the architect promptly if they discover a discrepancy, ambiguity or omission in the contract documents. Once notified, the architect must issue promptly an instruction to the contractor having regard to the order of precedence of documents set out in **clause B2**.

Clause B2 sets out the order of precedence of documents. If the architect issues an instruction to resolve a discrepancy, ambiguity or omission in the contract documents that is not in accordance with the order of precedence of documents, the instruction is an instruction for a variation. In that case, the process set out in **section J** applies.



Architect's forms

- BW-10 Architect's instruction
- BW-12 Instruction – for a variation

Contractor's forms

- BW-41 Notice of intention to claim
- BW-59 Notification of official document

Key points

- The owner has the right to hold security by way of cash retention.
- The cash retention is 5% of the contract price, as adjusted.
- The cash retention is accumulated by the architect deducting up to 10% of each progress payment until the value of cash held equals 5% of the contract price.
- The owner must hold the cash retention as trustee in a separate bank account.
- The owner may draw on the security in certain circumstances.
- The owner must release the security in two stages.

Guidance

Drawing on the security

The owner may draw on the security where a final certificate has been issued and monies are payable to the owner or where the engagement of the contractor is terminated. The owner must comply with the procedures in **clause C3**, before the owner may draw on the security.

Release of the security

On the architect issuing the notice of practical completion, the contractor is entitled to release of 50% of the amount of security held. When the architect issues the final certificate, the balance of the security is provided to the contractor less any fees, charges and money owed to the owner.

Links

Section M (practical completion).

Section N (final certificate and final claim)

Architect's forms

- BW-20** Notice of practical completion
BW-31 Final certificate
BW-33 Certificate – release of contractor's security

Contractor's forms

- BW-47** Notice to architect – works at practical completion
BW-49 Final claim – summary sheet

Section D – Liability

Key points

- The contractor is liable for the risks until practical completion.
- The owner is liable for the risks after practical completion.
- The other party may be proportionally liable for a risk if it contributed (even partly) to the risk becoming manifest.

Guidance

The risk allocation under the contract conforms to the widely accepted standard that the risk should reside with the party best able to deal with it ('Abrahamson Principle').

During construction, the contractor bears the risks associated with the construction until practical completion. After that, the owner bears the risks. The risks borne by the contractor and the owner are set out in **clauses D1** and **D3** of the contract, respectively.

Under **clause D2**, the contractor bears the risks set out in **clause D1** and indemnifies the owner for any loss or damage occurring before practical completion, except to the extent that the owner is responsible for the loss or damage.

After practical completion, the owner bears the risks set out in **clause D3** and indemnifies the contractor for any loss or damage the contractor suffers, except to the extent that the contractor is responsible for the loss or damage (**clause D4**). Note that the insurance policies under **section E** must remain in place until final certificate. (see **clause E1**). This is for the benefit of both the owner and the contractor, even there is a change in who bears the risks, under **clause D4**.

Links

Section E (insurance requirements for the works).

Section M (when practical completion occurs).

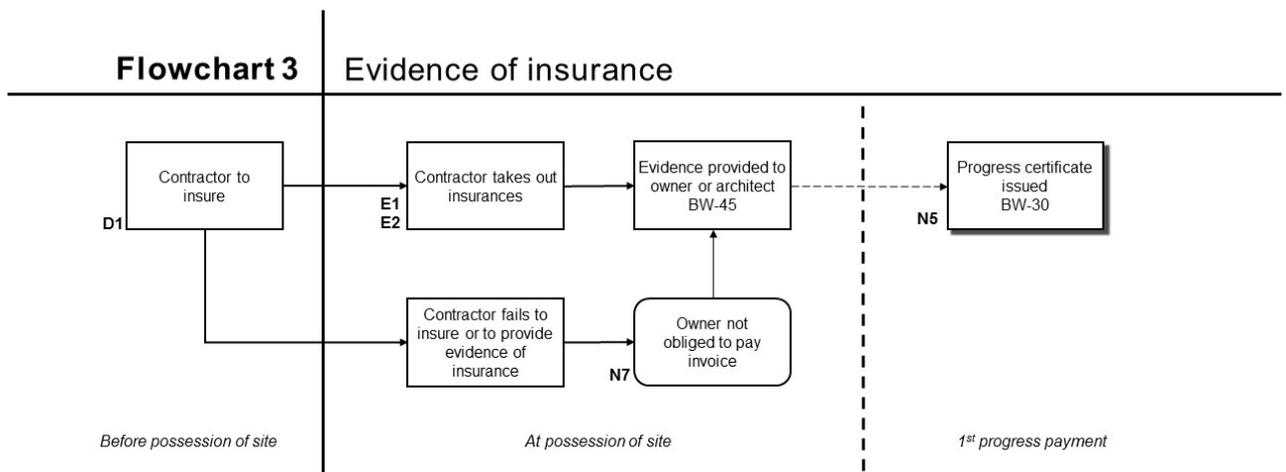
Key points

- Contract works insurance and public liability insurance are essential because of the liabilities each party bears during construction, set out in **section D**.
- The contractor is responsible for these insurances.
- The contractor must maintain workers compensation and employer’s liability insurance and ensure that any subcontractors maintain those insurances.
- The contract sets out particular terms that the insurances must contain.

Guidance

The contractor has to take out public liability and contract works insurance (**clause E1**) and maintain workers compensation and employer’s liability insurances (**clause E3**).

The party making the claim has to pay the excess on the insurance (**clause E4**). The party can recover the excess from the other party to the extent that the loss resulted from the actions of the other party.



Links

Section D Liability

Clause N7.1 – insurances to be in place before owner is obliged to pay the amount owing under the first certificate

Architect’s forms

BW-22 Notice of insurance

Contractor’s forms

BW-45 Evidence of insurances

Section F – Site

Key points

- The owner has to give the contractor possession of the site.
- The contractor has to give the owner reasonable access to the site.
- The contractor must have inspected the site information before taking possession.
- The contractor can make a time/cost claim if the contractor discovers a latent condition on the site.

Guidance

Owner to give possession of the site (**clause F1**)

The owner has to give the contractor possession of the site within 10 working days of:

- the owner, or the architect as the owner's agent, receives a copy of the contract signed by the contractor and
- the owner is satisfied that all the insurances are in place for the works (see **section E**).

The owner warrants that it has given the contractor all the site information at least 5 working days before the close of tenders.

Contractor's obligations

The contractor must have examined the site information and inspected the site before signing the contract.

The contractor has to give the owner or its agents (the architect, consultants and others) access on reasonable terms to the site. Reasonable terms include compliance with the contractor's WH&S system in place (the owner/architect or other person has to be inducted if required by the contractor).

Time/cost claims

The contractor can make a time/cost claim if the contractor discovers a latent condition on the site. The requirements for making a time/cost claim and the procedures to be followed are set out in **section H**.

Links

Section E (insurance).

Section H (time/cost claims).

Architect's forms

BW-12 Instruction – for a variation

Contractor's forms

BW-40 Request for information/instruction/notice

BW-41 Notice of intention to claim

BW-42 Details of claim

BW-43 Additional information

BW-55 Contractor's notice

Key points

- The owner must give the contractor sufficient information to allow the contractor to set out the works.
- The contractor has various obligations to the owner including being liable to the owner for necessary work done by subcontractors.

Guidance

Setting out the works

The owner has to give the contractor sufficient information to allow the contractor to set out the works, including sufficient information to locate a reference set-out mark (**clause G1**).

Contractor's obligations

The contractor is responsible to the owner for the necessary work undertaken by any subcontractors engaged by the contractor and for the acts or omissions of any of its suppliers and subcontractors. The contractor has to ensure that its agreements with its subcontractors and suppliers include all the relevant provisions of the principal contract (**clause G2**).

Links

Section H (time/cost claims).

Architect's forms

BW-10 Architect's instruction

Contractor's forms

BW-40 Request for information/instruction/notice

Section H – Claims to adjust the contract

Key points

- **Section H** sets out the procedures to be followed whenever a claim to adjust the contract is made.
- A claim to adjust the contract can be for time, or cost or both.

Guidance

The contract states when a time/cost claim can be made. The procedure for making a time/cost claim is set out below:

Time/cost claims procedure

Action	Clause	Form
1. The contractor can only make a time/cost claim where the contractor: <ul style="list-style-type: none">• promptly notifies the architect of its intention to make a claim after receiving an instruction from the architect or becoming aware of an event that will result in a claim and• submits a claim within a time agreed with the architect, or, if nothing agreed, within 15 working days.	H1.1(a) and (b)	BW-41 BW-42
2. If a claim results from delay the contractor does not have to notify the architect of its intention to make a claim, but must still submit a claim within 15 working days after the delay ends.	H1.2	BW-42
3. The architect must promptly assess the claim and issue a written decision specifying any adjustment to the contract price or the date for practical completion.	H3.1	
4. The contractor can dispute the decision but must continue to perform its obligations under the contract, including the change.	H3.2	
5. If the decision adjusts the contract price, the contract price will be adjusted with the next progress claim.	N5	

Links

Clause A8 (disputes).

Clause N5 (progress claim).

Architect's forms

BW10 Architect's instruction

BW13 Instruction – to proceed/not proceed with a variation

Contractor's forms

BW41 Notice of intention to claim

BW-42 Details of claim

BW-55 Contractor's notice

BW-57A Notice of dispute (acts done)

BW-57B Notice of dispute (failure to act)

Section I

Not used.

Variation to the works – Section J

Key points

- The architect may issue an instruction for a variation (**clause J1**). A variation may or may not result in a cost adjustment.
- If an authorised person issues an official document, the contractor may request a variation (**clause J4**)

Guidance

Section J deals with variations to the works.

Architect's instruction for a variation

Action	Clause	Form
1. Architect issues an instruction for a variation. The instruction may include the contractor providing within 10 working days estimates of the cost of, or of any saving, any variation to the date of practical completion and a request for a quotation for the cost of a variation and its effect on the date for practical completion.	J1.1 J1.2	BW-10 BW-12
2. The contractor may request an instruction for a variation from the architect.	J1.3	BW-40
3. Contractor reviews instruction and if it considers there are no time/cost implications, it must carry out the instruction promptly.	J2.2	
4. There may be time cost implications where an instruction includes a request for an estimate of the cost or saving of a variation, or a request for a quote or an estimate of the delay. Where the contractor has notified the architect promptly in writing that there will be a change in the contract price or delay there may also be time cost implications. If so the following applies.	J1.2 J2.3c	BW-10 BW-55
5. Within 5 working days after receiving the contractor's requested information or notification, the architect must further instruct the contractor that the variation will or will not proceed.	J3.1	
6. If the architect instructs the contractor to proceed with the variation then the contractor must do so promptly.	J3.2	

Links

Clause B3.4 (definition of an official document).

Architect's forms

BW-10	Architect's instruction
BW-12	Instruction – for a variation
BW-13	Instruction – to proceed/not proceed with a variation

Contractor's forms

BW-40	Request for information/instruction/notice
BW-41	Notice of intention to claim
BW-42	Details of claim
BW-43	Additional information
BW-55	Contractor's notice
BW-57A	Notice of dispute (acts done)
BW-57B	Notice of dispute (failure to act)
BW-59	Notification of official document

Section K – Adjustment of provisional and prime cost sums

Key points

- Provisional sum = an allowance for work, the supply of materials or the connection of an infrastructure service, where the details were not fully known at the time that the contract was executed.
- Prime cost sum = an allowance for items of material or equipment or a fee to a relevant authority that was not known or precisely identified at the time that the contract was executed.
- The architect must instruct the contractor about provisional and prime cost sums.
- The contractor must quote in relation to an architect’s instruction.
- On acceptance of the quote, the architect adjusts the cost of the building work.

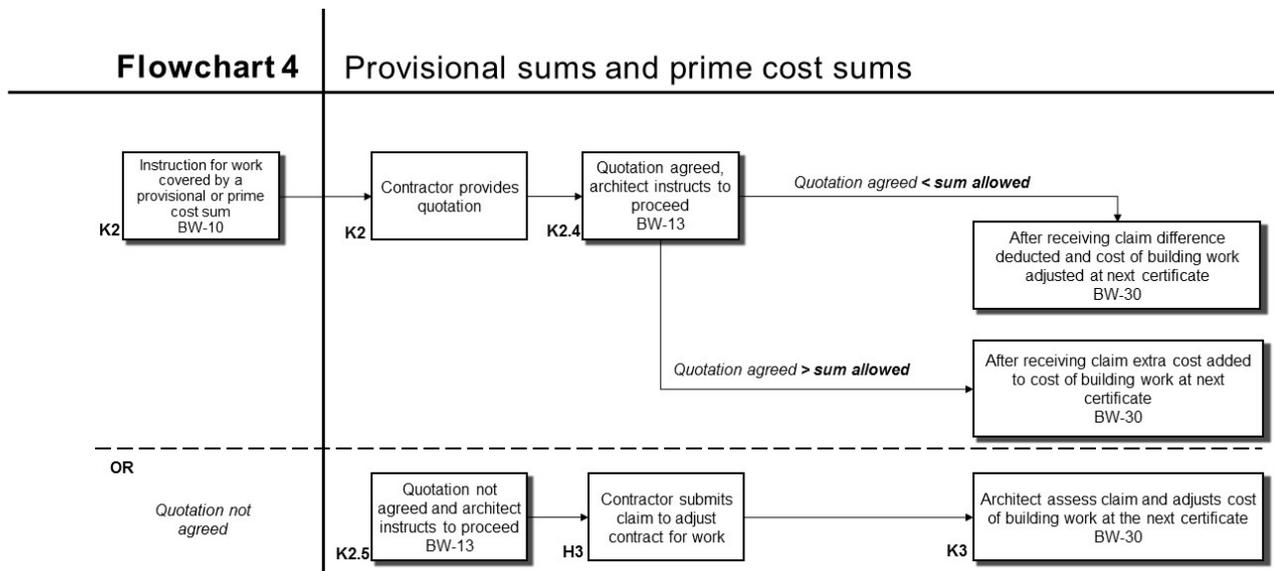
Guidance

In **clause K1**, the contract distinguishes between a provisional sum that allows for foreseeable necessary work, including supply of materials, and a prime cost sum that allows for the supply or the supply and installation of an ‘off-the-shelf’ item that is not yet fully specified. Allowances for provisional and prime cost sums are set out in **items 11 and 12 of schedule 1** of the contract.

Provisional sums may cover work such as excavation, rock removal, joinery items not yet designed, landscaping and physical connection of a service.

Prime cost sums cover items such as tapware, sanitary fittings, light fittings or white goods, where the final selection was not made at the time the contract was entered into, as well as specific authority fees and charges.

The contract requires the contractor to allow, in the contract price, all of its costs including preliminaries and its overheads and profit associated with the work involved with provisional sums and prime cost sums, and for the time that the work may take.



Adjustment of provisional and prime cost sums – Section K

Architect's instructions for prime cost or provisional sum items

If the architect issues an instruction regarding work for which a provisional or prime cost sum has been allowed (but not payment of a fee or charge), the following actions are required under the contract:

Action	Clause	Form
1. The architect instructs the contractor to provide a written quotation for the supply and installation of an item for which a provisional or prime cost sum is allowed.	K2.2	BW-10
2. The contractor must provide a quotation and cannot proceed unless it receives an instruction to proceed, (except for a prime cost sum for payment of a fee or charge to an authority).	K2.3 K2.4	BW-43 BW-10
3. The quotation can only be for the direct cost to the contractor excluding any margins for preliminaries, overheads, profit or GST.	K2.3	
4. If the architect agrees with the quotation, the architect must issue an instruction to proceed, except for a prime cost sum for payment of a fee or charge to an authority.	K2.4	BW-13
5. If the architect does not agree with the quotation, or has not requested a quotation, the architect may issue an instruction to proceed and must issue a decision under clause H3 .	K2.5	BW-13

Architect's forms

BW-10 Architect's instruction
 BW-13 Instruction – proceed/not proceed with variation
 BW-30 Progress payment certificate

Contractor's forms

BW-43 Additional information
 BW-57A Notice of dispute (acts done)

Section L – Adjustment of time

Key points

- The contractor can make a claim for an adjustment of time **with costs** for delays caused by an act or omission of the owner.
- The contractor can make a claim for an adjustment of time **without costs** for other delays but only where those delays exceed the allowances set out in **item 7 of schedule 1** of the contract.

Guidance

The cause of delay that the contractor may claim for adjustment of time with costs is limited. It is limited to the situation where a delay affecting working days is caused by the act or omission of the owner – **clause L1.1**.

Clause L3 sets out particular causes of delay that entitle the contractor to make a claim for an adjustment of time **but not costs** where the number of days allowed given the nature of the work, non-working days or the effect of weather conditions on working days are greater than the allowance for these matters set out in **item 7 of schedule 1** of the contract. **Clause L2** contains a warranty by the contractor that the number of days to bring the works to practical completion includes a reasonable allowance for the matters which are able to trigger a claim for adjustment of time without costs. The required level of proof to claim is therefore high.

Links

Section H sets out the requirements for making a claim and the procedures to be followed.

Architect's forms

BW-14 Instruction – adjustment of time

Contractor's forms

BW-60 Notice of start or end of delay

Completion of the works – Section M

Key points

- The contractor notifies the architect when the contractor thinks the works have reached practical completion.
- The architect certifies when practical completion is reached. The architect is obliged to certify practical completion independently of the views of the parties.
- The owner's occupation of the works triggers practical completion even if the works have not reached that stage.
- The issue of the certificate of practical completion triggers the defects liability period, the shift to the owner of risk stated in **clause D3** and release of security.
- The owner may have a right to liquidated damages if the works only reach practical completion after the date for practical completion as adjusted.

Guidance

Practical completion

In **clause M1**, the contractor must bring the works to practical completion by the date shown in **item 8 of schedule 1**. This date may be adjusted under the contract. The works have reached practical completion when in the architect's reasonable opinion:

- they are substantially complete and any incomplete works or defects are relatively minor and will not unreasonably affect occupation
- all approvals required for occupation have been obtained and have been given to the architect.

The owner takes possession of the works at 4.00pm on the day that the architect issues the notice of practical completion. The notice triggers release of 50% of the security in accordance with **clause C4**.

In accordance with **clause M3**, if the works are not complete by the adjusted date for practical completion, liquidated damages may apply.

Clause M5 provides for a defects liability period. The period is 180 days and it begins on the date of practical completion.

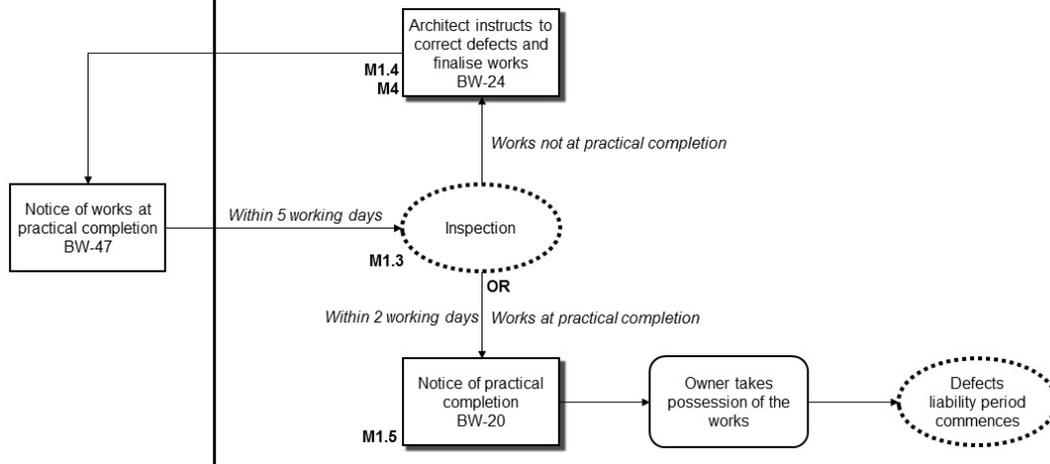
Practical completion

Action	Clause	Form
1. The contractor must notify the architect that the works are at practical completion and give a copy of the schedule of defects and incomplete work indicating that each item has been corrected or completed to the satisfaction of the contractor.	M1.2	BW-47
2. The architect and the contractor must within 5 working days after the contractor's notice under clause M1.2 meet on the site and undertake a joint inspection of the works and examine them for defects and incomplete work.	M1.3	
3. If after the joint inspection, the architect considers that the works have not reached practical completion, the architect must prepare a further schedule of defects and incomplete work and give a copy to the contractor and the owner. That notification is an architect's instruction.	M1.4	BW-23
4. If after the joint inspection the architect considers that the works have reached practical completion, the architect must issue to the contractor and the owner a notice of practical completion. This must be done within 2 working days after completing the inspection.	M1.5	BW-20

See also **Flowchart 5**.

Section M – Completion of the works

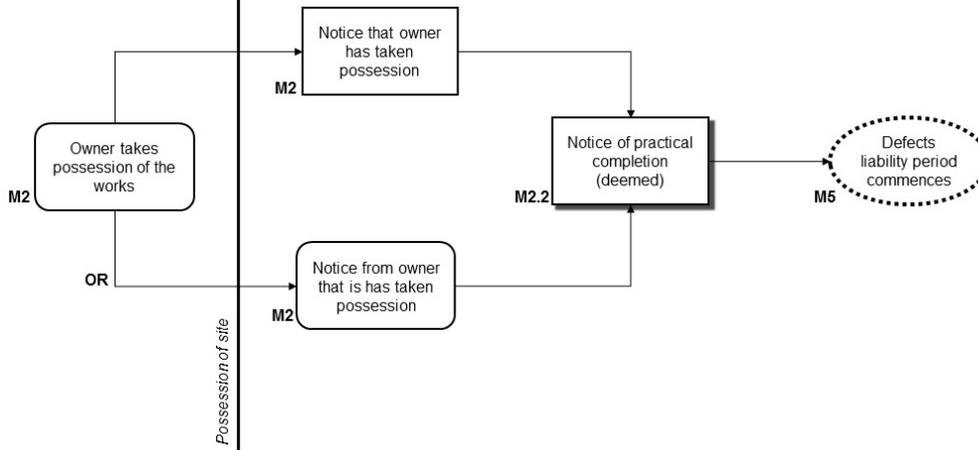
Flowchart 5 Practical completion



If owner takes possession before practical completion (**clause M2.1**)

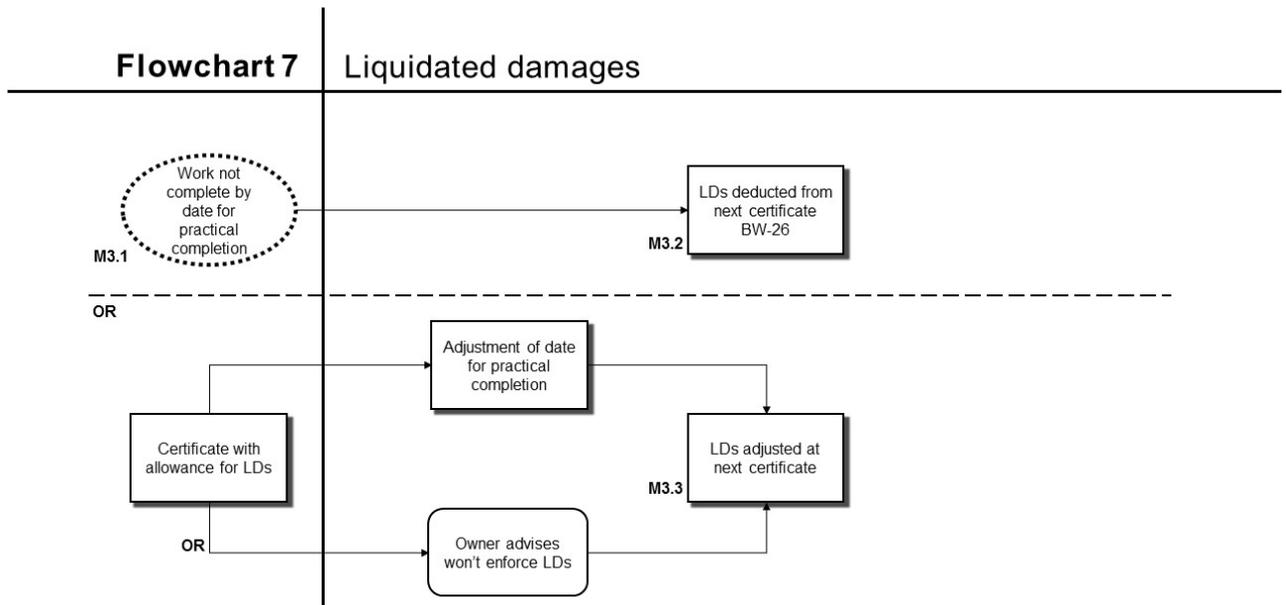
If the owner takes possession of the *works* before the architect issues a notice of practical completion (**clause M2**) the works are to be treated as having reached practical completion. The architect (**clause M2.2**) must issue to the contractor and to the owner a notice of practical completion within 2 working days after being notified in writing that the owner has taken possession.

Flowchart 6 Possession by owner



Liquidated damages (clause M3)

Under **clause M3**, the contractor is liable to pay liquidated damages if the works are not completed by the adjusted date for practical completion. The rate for liquidated damages is in **item 9 of schedule 1**.



Correcting defects and finalising work (clause M4)

The contractor must correct any defects or finalise any incomplete work whether before or after practical completion within 10 working days after receiving a written instruction from the architect to do so. If the work is to be done after practical completion, then the contractor can only have access to the site by prior arrangement with the owner or the architect: **clause M1.7**.

Links

Section D (risks before and after practical completion).

Section E (insurance before and after practical completion).

Architect's forms

- BW-20 Notice of practical completion
- BW-24 Notice that works not at practical completion
- BW-26 Notice of entitlement to liquidated damages

Contractor's forms

- BW-47 Notice to architect – works at practical completion
- BW-53 Notice of possession of the works before practical completion

Section N – Payment for works

Key points

- The contract price has to include all relevant costs associated with completing the works including provisional and prime cost sums.
- The contractor has to submit progress claims for the works. A progress claim is a required procedure under this contract and is not a 'payment claim' under security of payment legislation unless it is also provided by the contractor to the owner in accordance with the relevant legislation's requirements.
- The architect has to assess each progress claim within 10 business days and then issue progress certificates.
- A progress certificate issued by the architect to the contractor is a required procedure under this contract and is not a 'payment statement' or equivalent under security of payment legislation, unless the owner provides it to the contractor as a response to a claim under that legislation.
- The contractor has to prepare a tax invoice and submit it with the certificate to the owner for payment which must be made within 5 working days after delivery of the certificate and a tax invoice.
- There are particular requirements for the first and final payment claims.

Guidance

This section defines the owner's obligation to pay progress claims and the final claim and sets out the procedures that apply when the contractor makes claims for progress payments and the architect assesses these claims.

Under **clause N3**:

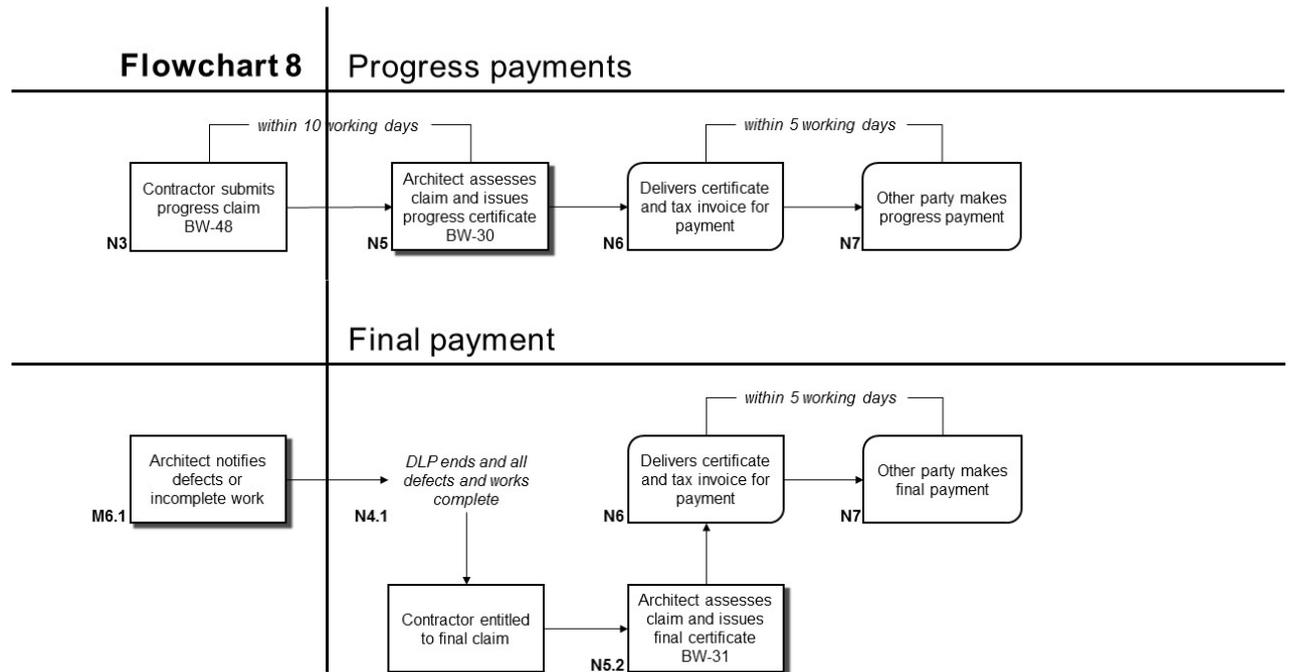
- The contractor may submit one claim at each of the stages for progress claims shown in **item 10 of schedule 1**.
- The claim must set out the contractor's valuation of the necessary work completed since the date of possession of the site for the first claim or since the previous claim. The valuation must not be greater than the percentage of the contract price for the particular stage. These percentages are in **item 10 of schedule 1**.
- The claim must set out the total amount claimed to be payable under the contract at the completion of the relevant stage.
- The claim must include the amount of GST.

Under **clause N5**, the architect must assess the contractor's claim for payment and issue a certificate setting out how much is due within 10 business days after receiving a claim.

The contract requires the party to be paid (it could be the contractor or the owner) to prepare a tax invoice for the same amount as the certificate and present both documents to the other party for payment.

The contractor can claim for the final payment when the defects liability period has ended and the contractor has rectified all defects and finalised all incomplete work. The final certificate must show any claim for set off of moneys due, the remaining security and GST. No further claims can be made after the final payment (**clause N4.2**).

Payment for works – Section N



Links

Item 10 (stages for progress claims)

Section H (requirements for making a claim and the procedures to be followed).

Section Q (procedures for terminating or suspending the contract).

Architect's forms

BW-30 Progress payment certificate

BW-31 Final certificate

Contractor's forms

BW-48 Progress claim – summary sheet

BW-49 Final claim – summary sheet (optional)

BW-55 Contractor's notice

Section O

Not used.

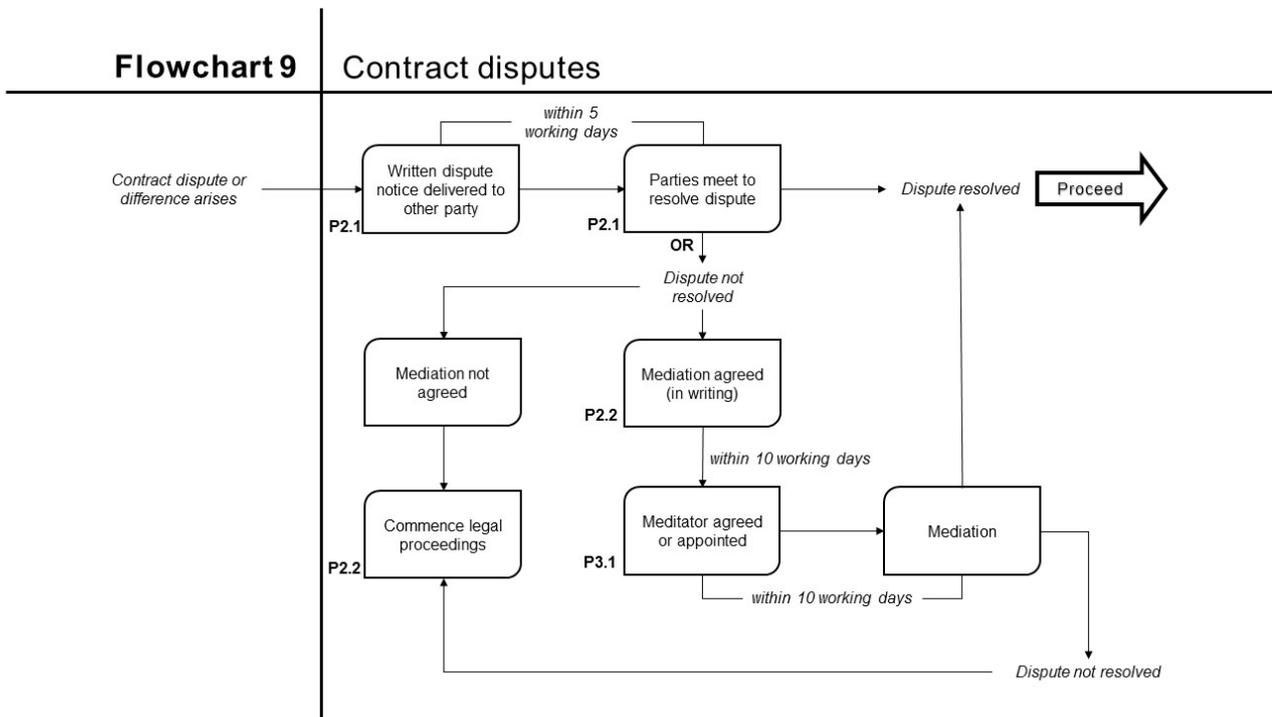
Section P – Dispute resolution

Key points

- The parties must continue to perform their obligations even though there is a dispute.
- At least one party has to serve a written notice on the other to trigger the dispute resolution procedures.
- There must be a meeting to attempt to resolve the dispute within 5 working days after the notice is served.
- If the dispute or difference is not resolved within 10 working days after the notice is delivered the parties may then agree to use mediation to resolve the dispute.
- If the dispute or difference is not resolved and the parties have not agreed to mediate the dispute either party can begin litigation.

Guidance

If a dispute or difference arises, each party must continue to perform its obligations under the contract (**clause P1**). The process for resolving the dispute is set out below.



Termination of engagement – Section Q

Key points

- The owner or the contractor can terminate the engagement of the other party where that party becomes insolvent or breaches a substantial obligation under the contract and does not rectify the breach or show cause why it cannot. A failure by the owner to pay a progress claim on time is a breach of a substantial obligation.

Guidance

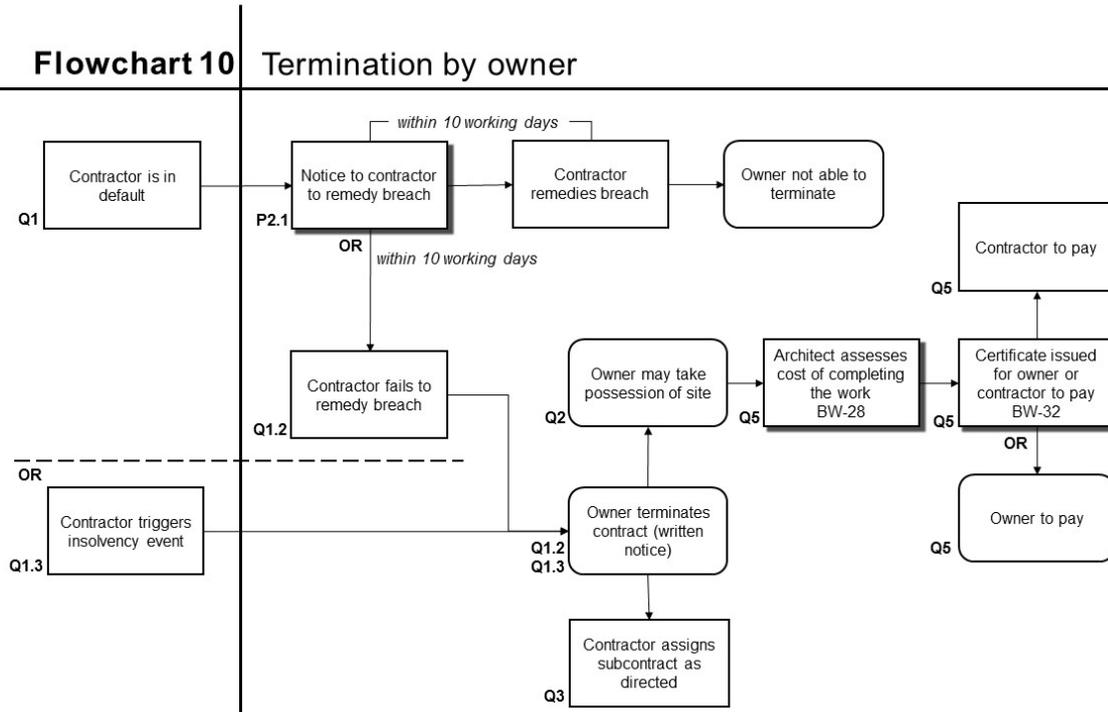
If the party's engagement is to be terminated, the following procedures apply. Note it is recommended that for events arising under **clauses Q1.1, Q1.2, Q1.3** and **Q2** advice be received and the communication tailored to the specific circumstances:

Termination by the owner (**clauses Q1 to Q7**)

Action	Clause	Form
1. If the contractor fails to meet a substantial obligation under the contract, the owner may give written notice: <ul style="list-style-type: none"> specifying the breach requiring the contractor to remedy the breach within 10 working days and stating that the notice is given under clause Q1. 	Q1.1	
2. If: <ul style="list-style-type: none"> the default is not remedied or the contractor fails to show reasonable cause why it cannot be remedied within 10 working days, the owner may give the contractor a written notice of termination stating that the notice is given under clause Q1 .	Q1.2	
3. The owner may immediately terminate the engagement of the contractor if the contractor becomes insolvent. The owner gives a written notice stating that it is given under clause Q2 .	Q1.3	
4. If the owner terminates the contract under clause Q1 : <ul style="list-style-type: none"> the owner can take possession of the site and exclude the contractor from it the owner can take possession of any documents, unused materials and equipment and use them in completing the works The risk passes to the owner who must take out insurance.	Q2	
5. After termination under clause Q 1 the architect can instruct the contractor to remove its property from the site as listed in an instruction. The owner must allow the contractor access to remove the property on reasonable terms.	Q2.3 Q3	BW-10
6. After termination under clause Q1 : <ul style="list-style-type: none"> the contractor must assign its rights under any subcontract if required to do so by the architect the only obligation on the owner to make payment is under clause Q5 the architect must promptly make a written assessment of the cost to the owner of completing the works, and give a copy to the owner and the contractor. Then the architect must promptly prepare the certificate under clause Q5 for the amount payable (if any) to the contractor or the owner and give it to the owner and the contractor and the certificate takes the place of a final certificate under clause N5 .	Q3.1 to Q5	BW-32
7. Any security must be released.	C5	

Section Q – Termination of engagement

Flowchart 10 Termination by owner



Architect's forms

- BW-10 Architect's instruction
- BW-28 Notice – assessment of cost of completing the work
- BW-32 Certificate – termination payment

Contractor's forms

- BW-42 Details of claim
- BW-55 Contractor's notice
- BW-56 Notice of suspension/termination

Miscellaneous and Definitions – Sections R & S

Guidance

Both **sections R** and **S** assist in interpreting the contract.

Section R covers general interpretation of the contract, like how to interpret things done or not done, how laws are to apply, confidentiality and how and when documents and communications are to be sent to another party.

Section S contains specific definitions of a number of terms used in the contract. Defined terms are shown in the contract with a star and in italics, e.g., **works*. If a party is unsure of the meaning under the contract of a defined word, refer to **section S**.

Sending documents to a party

A party can send a document to another party by hand or post, facsimile or email (**clause R1**). For ease of communication, each party should nominate their contact details in the contract and agree on the preferred method of communication and protocols for that communication. **Clause R2** sets out when a document is deemed to be delivered by different methods (hand, post, facsimile or email). Email can be a legally effective form of communication under an ABIC contract if the conditions in **clause R1.1c** are met.

Each party needs to take account of the time taken for a document to be delivered according to the rules in **clause R2**, so that the party complies with the time constraints set out in the contract. Where time of sending affects the operation of the rule, it is the time of sending in the time zone of the site.

List of Forms

The forms referred to in this user guide are listed below. Digital, editable copies are available for purchase or download separately to the user guide and the contract.

Architect's forms

Form	Title	Clause
<i>Instructions</i>		
BW-10	Architect's instruction	F6.1, J1.1, J1.2, J3.1, J4.2, Q2.3
BW-11	Contract price adjustment	H3, J4, K3
BW-12	Architects instruction for a variation	J1.2
BW-13	Instruction – to proceed/not proceed with a variation	J3
BW-14	Instruction – adjustment of time	L1.1, L3
BW-15	Instruction – to correct defects or finalise work	M4
<i>Notices</i>		
BW-20	Notice of practical completion	C4, D3, D4, M1.5, M2.2, M5
BW-22	Notice of insurance	Section E, N7.1
BW-24	Notice – the works not at practical completion	M1.4
BW-26	Notice – entitlement to liquidated damages	M3.1
BW-28	Notice – assessment of cost of completing the works	Q1.2, Q1.3, Q5
<i>Certificates</i>		
BW-30	Progress payment certificate	N5.1
BW-31	Final certificate	N5.2, N8
BW-32	Certificate – termination payment	N8, Q5
BW-33	Certificate – release security	C4

Contractor's forms

Form	Title	Clause
BW-40	Request for information/instruction/notice	A7.1, B2.3, E6, F5.1, F6, J1.3, M1.2
BW-41	Notice of intention to claim	E4, H2, J5, L3, N3, N4, Q6.5
BW-42	Details of claim	E4, H2, J5, L3, N3, N4, Q6.5
BW-43	Additional information	E4, F7, J5, L1, L3, N3, N4, Q6.5
BW-45	Evidence of insurances – contractor to insure	Section E
BW-48	Progress claim – summary sheet	N3
BW-49	Final claim – summary sheet	N4.1
BW-53	Notice of possession of the works before practical completion	M2.1
BW-55	Contractor's notice	A2.2, A3.1b, B1, F5, J2.3, J4.1
BW-56	Notice of termination	Q6
BW-57A	Notice of dispute (acts done)	A6
BW-57B	Notice of dispute (failure to act)	A7
BW-58	Notice of dispute – clause P2	P2
BW-59	Notification of an official document	J4.1