

COMMERCIAL COST PLUS CONTRACT

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CONTRACT



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Institute of
Architects



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ABIC CP-2014 C Commercial Cost Plus Contract User Guide

Disclaimer

This User Guide is for general guidance only and is not legal advice. While all care has been taken in its preparation, the Australian Institute of Architects, Master Builders Australia Ltd, their directors, officers and the authors, do not accept any responsibility for the completeness, accuracy or currency of the user guide.

The Commercial Cost Plus CP-2014 C contract is not warranted for use on domestic projects and state legislation may limit or prohibit the use of cost plus contracts for domestic projects. If you intend to use this contract for a domestic project, seek legal advice on whether you can and how you could use the CP-2014 C contract for that purpose.

Reference Copy

Introduction

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

The ABIC Cost Plus contract, CP-2014 C, is intended for use where an architect administers a cost plus contract. CP-2014 C replaces the former AIA/Master Builders agreed contract FF/C which is now obsolete. Use of FF/C is no longer authorised by the copyright holders.

Similarly to the former FF/C contract, and as with all cost plus contracts, under CP-2014 C the contractor is to be paid an amount based on the costs incurred by the contractor, plus a margin on that amount. The fee is either a lump sum or a percentage of the cost of the Works, according to the provisions selected in CP-2014 C. Costs plus is a contract form suited to circumstances where there is insufficient detail at the commencement of work for a final cost to be calculated.

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, although with a cost plus contract more of the risk is transferred to the owner given the nature of its terms; and
- inclusion of a number of detailed supporting documents, including this user guide and pro forma notices and certificates for the architect and the contractor.

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 normal 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 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. The Institute publishes state and territory-specific advice on the ABIC contracts via Acumen, its online practise advisory database for architects. Each Master Builders' office provides its members with advice about local housing requirements.

It is essential that before using CP-2014 for domestic works, you are professionally advised.

For further information, please contact:

Master Builders Australia Limited Level 1, 16 Bentham Street YARRALUMLA ACT 2600 PO Box 7170 YARRALUMLA ACT 2600 T (02) 6202 8888 F (02) 6202 8877 E enquiries@masterbuilders.com.au W www.masterbuilders.com.au	Australian Institute of Architects Knowledge Services Level 3 30 Collins Street MELBOURNE VIC 3000 T (03) 8620 3877 F (03) 8620 3864 E knowledge@raia.com.au W www.architecture.com.au
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Differences between CP-2014 and the obsolete FF/C

The CP-2014 contract is the only non-lump sum contract in the ABIC suite of building contracts. It is a more comprehensive cost plus contract than the now obsolete FF/C contract. The CP-2014 provides for:

- Contractor's fee to be calculated on the basis of either:
 - a percentage fee; or
 - a fixed fee with allowable adjustments for provisional and prime cost items (where a particular person will be engaged) and changes to the scope of works
- Alternative security in the form of either unconditional guarantees or cash retentions
- Provision of security for off-site plant and materials
- Change of type of security given by the contractor to the owner
- Provision of security by the owner to the contractor
- A comprehensive list of items included in the cost of the works
- Provision of a non-binding estimate of the contract price
- Regular revision of the contract price estimate, to ensure that there is adequate security and insurance in place throughout construction
- Procedures for dealing with latent conditions, valuable items and dangerous or contaminated material
- Provision for the contractor to promptly give copies of all documents to the architect to assist with preparation of monthly certificates and reporting
- Provision for the architect to regularly provide progress reports to the owner and contractor
- Adjustments of time for delays
- Procedures for mediation, expert determination and arbitration of disputes

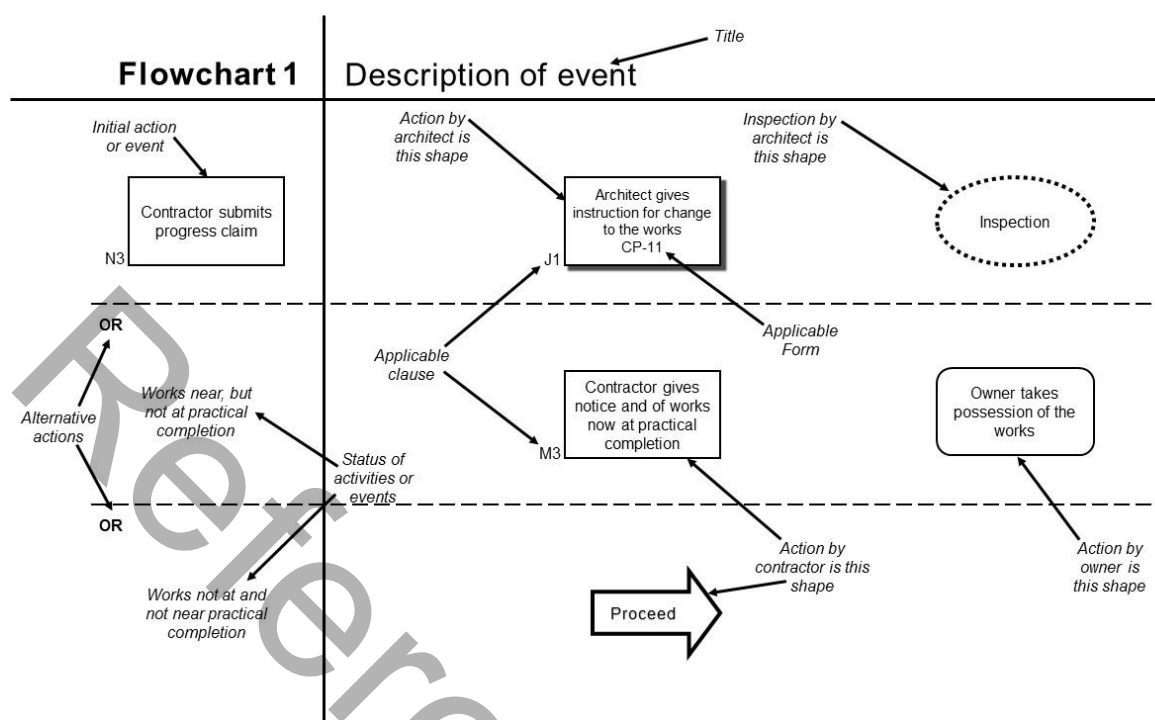
Terminology

The terminology in CP-2014 C has been modernised and uses plain English and the mechanisms and concepts typical of a cost plus contract have been improved over the old FF/C. The CP-2014 C now uses the terms:

- **changes to the works* and **changes fee* to distinguish them from the concept of a "variation" (which is not appropriate for the CP-2014 C)
- **contractor's fee* (which can be either a **fixed fee* or a **percentage fee*), rather than the terms "consideration" and "Builder's fee" used inconsistently in FF/C
- **cost of building work* (used in ABIC contracts), rather than the term "actual cost of the Works"
- **unconditional guarantees* (also used in ABIC contracts) being security equivalent to a "bank guarantee". There was no provision for security to be given under the old FF/C.

Flowcharts

The flowcharts included in this user guide conform to the structure 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, special or bank 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, special or bank holiday.

Promptly means as soon as practicable.

Clause	Event	Architect or Owner	Contractor
A2.1a	Begin works		Within 10 working days after possession of the site
A2.1e	Comply with urgent instruction		Immediately
A3.1e	Advise change of GST status or ABN		Promptly
A4.2	Inform architect and contractor of change in financial position	Immediately	
A5.3c	Advise change of GST status or ABN	Promptly	
A7.3	Confirm urgent instruction in writing	Within one working day of oral instruction	
A8.1	Dispute architect's certificate, written decision or failure to act	Within 20 working days after receiving certificate, notice or decision/assessment or becoming aware of failure	Within 20 working days after receiving certificate, notice or decision/assessment or becoming aware of failure
A8.3	Assess party's dispute notice under clause A8.1 and provide written decision	10 working days	
B1.2	Notify architect in writing of discrepancy in documents	Promptly	Promptly
B1.2	Issue instruction to resolve discrepancy in the documents	Promptly	
B3.1	Supply copies of official documents	Promptly	Promptly
B4.1	Give contract price estimate to owner		On or before date the contract is executed
B4.4	Give a revised contract price estimate to owner		Each time a claim under clause N3 is submitted
C3.1	Provide unconditional guarantees as security		Within 10 working days after the contract is executed
C4.3	Decide which type of additional security to be given		Any time before the next payment claim
C4.4a	Advise the top-up costs in writing		Promptly

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
C4.4b	Give additional original unconditional guarantees to owner		On or before submitting next progress claim under N3
C8.3	Release 50% of security	Within the time shown in item 12 of schedule 1 after issue of notice of practical completion	
C9.3a	Release of remaining security	Within the time shown in item 12 of schedule 1 after issue of final certificate	
C10.2	Provide unconditional guarantees as security for off-site plant or materials		At the time the relevant progress claim is submitted for the off-site plant or materials
C11.3	Release of security for off-site plant or materials	Within the time shown in item 12 of schedule 1 after issue of a notice from architect that off-site plant or materials have been incorporated into the works	
C14.2	Security provided to contractor	Within 10 working days after the contract is executed	
C17.1	Release of security provided to contractor		Within the time shown in item 12 of schedule 1 after any of the events in C17.1
D5.1	Reinstatement during period when contractor bears risk		Promptly reinstate lost or damaged items of works
E1.1	Effect public liability insurance if nominated	From possession of the site until 4:00pm on day final certificate issued	From possession of the site until 4:00pm on day final certificate issued
E2.1	Effect contract works insurance if nominated	From possession of the site until 4:00pm on date of practical completion	From possession of the site until 4:00pm on date of practical completion
E3.1	Advise insurer of entitlement to input tax credit	Within 20 working days of insurance being taken out	Within 20 working days of insurance being taken out
E7.1	Maintain workers compensation and employer's liability insurance		Until final certificate is issued
E8.3a	Make insurance claim	Promptly	Promptly
E8.3c, E8.3e	Notify architect of insurance claim and provide all additional information requested	Promptly	Promptly

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
F1.1	Give possession of the site	From the date in item 19 of schedule 1 providing insurances are in place and contract is executed and a copy given to architect	
F3.1	Give all relevant site information	At least 5 working days before the close of tenders	
F4.1	Examine site information and inspect site		Before executing contract
F5.1	Notify and seek instructions due to latent condition/valuable item		Within 5 working days of discovery
F6.1	Give instruction regarding latent condition/valuable item	Promptly after receipt of notice	
F7.1	Notify authority and architect regarding dangerous/contaminated material		Immediately on discovery
F8.1d	Suspend work due to encroachment or right of support of neighbouring owner's property is affected		Immediately
F8.1e	Request architect's instruction regarding encroachment, etc.		Promptly
G5.1	Comply with instruction to open up/test works		Promptly
G7.1	Suspend the works		Promptly after receiving instruction
G7.1	Entitlement to remove plant and equipment due to suspension		If suspension continues for 15 working days or more
G7.2	Terminate due to suspension		If suspension continues for more than 20 working days
G8.1	Return to site and recommence the works		Promptly
H1.2	Give architect relevant documentation		Within 10 working days after receiving documentation
H2.1	Give written progress report to contractor and owner	Within 21 working days after receiving a claim	
I2.2	Make adjustment fee for change to the works	In the next progress claim	
I3.2	Make adjustment to fee for provisional or prime cost sum	In the next progress claim	

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
J1.1	Give written instruction for change to the works	At any time (but not after date of practical completion)	
J1.4	Carry out instruction for change to the works		Promptly, subject to a request for review
J4.1	Notify architect of official notice		Promptly
J5.1	Give written instruction regarding official notice	Promptly	
J6.1	Comply with official document requiring variation and notify architect		Immediately
J8.1	Comply with urgent instruction for change to the works		Immediately
K2.4a	Written objection to subcontractor not previously identified by architect/owner in respect of provisional/prime cost sum		Promptly
L1.1	Notify delay to works		Within a reasonable time after becoming aware of delay, but not later than the next progress claim
L1.1	Notify end of delay to works		Within a reasonable time after becoming aware of delay, but not later than the next progress claim
M1.2	Bring works to practical completion		With all reasonable expedition
M1.4	Owner takes possession of the works	4:00pm on the date the notice of practical completion is issued.	
M2.1	Inspect works and prepare schedule of defects		10 days before expected date of practical completion as adjusted
M2.2	Give architect copy of schedule and written timetable for correction of defects		10 days before expected date of practical completion as adjusted
M3.2	Begin inspection of the works	Promptly	
M3.2	Complete inspection	Within agreed time or if none, within 10 working days	
M3.3	Give architect official documents for occupation and evidence of successful commissioning tests		Within agreed time for architect's inspection or if none, 10 working days

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
M4.1	Issue notice if works at practical completion	Within 5 working days after completing inspection	
M5.1	Issue written statement and defects list if works not at, but near, practical completion	Within 5 working days after completing inspection	
M6.1	Issue written statement and defects list if works not at, and not near, practical completion	Within 5 working days after completing inspection	
M7.1	Bring works to practical completion after architect's statement under M5 or M6		Promptly
M8.2	Deemed issue of notice of practical completion after request from contractor	Within 5 working days of the request	
M9.1	Correct defects		Within agreed time stated in instruction or if no time stated within 10 working days after receiving written instruction
M12.1	Rectify defects discovered during defects liability period		Promptly until defects rectified
N5.1	Issue progress payment certificate	Within 10 business days after receipt of claim	
N7.1	Pay progress claim	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice
N9.1	Issue certificate after request from contractor	Within 5 working days of request	
N9.2	Pay certificate if architect does not issue certificate after request under N9.1	Within 7 days after request delivered	
N9.3	Suspend work if owner does not pay contractor under N9.2		Immediately
N11.1	Assess final claim	Promptly	
N11.1	Provide additional information		Promptly
N11.1	Issue final certificate	Within reasonable time not exceeding 10 business days	
N13.1	Pay final claim	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice (delay in payment will attract interest on the overdue amount)	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice (delay in payment will attract interest on the overdue amount)
P	Disputes – See time limits table on page 47 of this User Guide		

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
Q1.1	Contractor to remedy default or show cause		10 working days
Q1.2	Terminate due to contractor default	10 working days after notice or further time as agreed	
Q2.1	Terminate due to insolvency event	Immediately	
Q3.3	Comply with removal of property instruction		Within 10 working days of instruction
Q8.1	Assess cost of completing the works	Promptly after termination	
Q9.1	Issue payment certificate	Promptly after assessment under Q8	
Q10.2	Pay amount owing	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice	Within period shown in item 12 of schedule 1 after delivery of certificate and tax invoice
Q11.1	Owner to remedy default	10 working days after notice	
Q12	Suspend work due to owner default		Immediately on written notice
Q13	Terminate due to owner default		After written notice is given
Q14.1	Terminate due to insolvency event		Immediately on written notice
Q16	Submit claim following termination		Within a reasonable time after terminating
Q17.1	Assess contractor's claim following termination	Promptly	
Q19.2	Assess claim and issue final certificate in event of frustration	Promptly	

Schedule 1 – Contract information

Comments

At least two copies of all contract documents must be prepared to provide each party with 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.

The parties must fill out the details of the project in **schedule 1** of the contract. A digital version of **schedule 1** is available in Microsoft Word format from Australian Institute of Architects' Knowledge Services (or online via Acumen) and Master Builders Australia. The owner and the contractor can meet to sign all copies of the contract (and documents) at the same time. In the authors' experience, this is the best way to ensure that the contract is executed correctly. However, if that is not possible, each may sign separately. In that case, unless otherwise agreed in writing, the date of the contract is the date the last party signs, and that party should be requested to insert that date when signing. That party should also be requested to keep one copy and forward the others to the architect for distribution, or, if only two copies are executed, for copying for the architect's use.

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 – Signing the contract

The owner and the contractor sign the contract at **item 1**. Alternatives are provided so that each party can sign as the appropriate legal entity that is entering into the contract, e.g. as an individual, a company, an unincorporated association or trustee. It is desirable for each party to initial the bottom of each page of the contract (including each page of the specifications and each page of drawings).

It is not recommended that alterations to the contract, or special conditions (other than those supplied with the contract – see **item 3**), are drafted or agreed to without legal advice. Although alteration to the contract may be handwritten, changes on the printed form are not recommended – insertion of changes as special conditions in **schedule 2a** is preferable. The parties must initial any handwritten changes to the contract or the specification or the drawings. If there are special conditions in **schedule 2a**, the page (or any annexed pages) must be initialled by each party.

Item 3 in **schedule 1** needs to be signed by the owner and contractor.

Each party must provide their contact addresses and details, their ABN, if applicable, and nominate a representative. The owner must identify its lending institution, if applicable. The contractor must provide its licence or registration number.

Item 2 – The architect

The architect must provide address and contact details, its registration number and identify its representative for administration of the contract.

Item 3 – Special conditions

In **item 3**, the parties need to say whether there are any special conditions. If special conditions are to be included, strike out the 'No' option and then set out the agreed special conditions in **schedule 2a**.

In the second part of **item 3**, the parties need to indicate if the owner will remain in occupation. If the owner will remain in occupation, strike out the 'No' option and then the standard owner occupier special conditions set out in **schedule 2b** apply.

Schedule 1 – Contract information

Item 4 – The contract price (**clause N1**)

The ABIC Commercial Cost Plus 2014 C contract provides two alternatives for calculating the contractor's fee.

Item 4(a) provides that the contractor's fee will be calculated by multiplying the percentage stated by the cost of building work. See the definition of **percentage fee* in **section S**.

OR

Item 4(b) provides that the contractor's fee will be calculated as an agreed, fixed fee plus applicable amounts for:

- the **changes fee* which is calculated by multiplying the relevant percentage in item 4(b) by the cost of the works to the contractor of a **change to the works*. See **clause I2**.
- the **provisional/prime cost fee* which is calculated by multiplying the relevant percentage in item 4(b) by the difference between the cost of the works to the contractor of a **change to the works*. See **clause I3**.

In either alternative, you must state the contractor's fee exclusive of GST.

Item 5 – Labour costs

Insert the percentage that will be used to calculate the proportion of wages and entitlements the contractor is entitled to claim as part of the **cost of building works* (usually based on 'on-costs' associated with employment). See **clause N1.2a**.

Items 6 and 7 – The works and the site

The works and the site for the works must be described accurately and briefly.

Items 8-11 – Security (**section C**)

The owner may require the contractor to give it a form of security. If so, the owner should nominate the type and amount of security required from the contractor, before the tenders are called. This is because the type and amount of security required by the owner may affect the contract price. Both may be subject to negotiation before the contract is executed.

Similarly, if the contractor wishes the owner to provide it with security, it should indicate this as part of its tender so that it is taken into account before the contract is executed. Only security by unconditional guarantee is available to the contractor.

If the owner requires security from the contractor, and the owner has not nominated the type of security, the type may be varied during the contract period.

Item 8a sets out whether the owner requires security from the contractor.

Item 8b sets out the type of contractor's security, either cash retention or unconditional guarantees. The owner may nominate the type it requires or, if it does not, cash retention applies.

Item 9 sets out whether the owner has to provide unconditional guarantees to the contractor as security.

In **item 10a**, the default provision is for the cash retention to be 5% of the estimate of the contract price. The cash retention under **clause C2** remains equal to 5% of the estimate of the contract price the contractor makes under **clause B4**. There is a default provision in **item 10b**, where additional security is given or required under **clause C4**. The default provision is to give additional security (whether by way of unconditional guarantees or cash retention under **clause C4.4** or **C4.5**) at 10% of the estimate of the contract price the contractor makes under **clause B4**.

In **item 11a**, the default provision for the contractor's security is for two (2) equal unconditional guarantees, both being 2.5% of the estimate of the contract price. The contract includes a provision that the owner is not

Schedule 1 – Contract information

obliged to pay the first certificate until (among other things) the unconditional guarantees have been given by the contractor.

If the security provided by the owner is requested in **item 11b**, the default provision for the owner's security is for one unconditional guarantee for 5% of the estimate of the contract price. The owner has to provide the security within 10 business days of signing the contract.

Item 12 – Period for payment of certificates or release of security

This item defines the period for payment of all monies due to be paid by one party to the other. The parties may need to take into account the requirements of the owner's lending institution if it has particular requirements for making funds available. The architect will often consult the owner so that the period for payment is a tender requirement. The number of days for payment to the contractor will then be fixed.

Item 13 – Public liability insurance (**clause E1**)

The contract allows either party to take out and maintain the public liability insurance for the project, although the default provision reflects the more common practice that the contractor does so.

Item 14 – Contract works insurance (**clause E2**)

The contract allows either party to take out and maintain the contract works insurance for the project, although, again, the default provision reflects the more common practice that the contractor does so.

Item 15 – Amount to meet fees of the architect and other consultants (**clause E4.1**)

This item recognises that additional fees may need to be met after an event resulting in an insurance claim. The default is 10% of the estimate of the contract price, but the specific nature of each project should be taken into account.

Item 16 – Amount to cover cost of demolition and removal of debris (**clause E4.1**)

This item recognises that demolition and removal costs may need to be met after an event resulting in an insurance claim. The default is 10% of the contract price, but the specific nature of each project should be taken into account.

Item 17 – Amount of insurance against injury, illness, disease or death (**clause E4.1**)

This item sets the amount of insurance against liability for personal injury, disease or death. The default is \$20,000,000.

Item 18 – Insurance excess (**clause E9**)

This item defines the insurance excess applicable to both public liability and contract works insurance.

Item 19 – Date by which owner must give contractor possession of the site (**clause F1**)

Provided that the contractor has met the conditions in **clause F1.2**, the owner must give the contractor possession of the site from the date stated in this item.

Because this date may affect the contract price, it is preferable that this is nominated at the time that tender documents are prepared. This item may also be subject to negotiation before the contract is executed.

Item 20 – Quality Assurance (**clause G2.2**)

Where the owner has particular quality assurance requirements for the project, these should be defined in this item. As compliance with the system may affect the contract price, it is preferable that this item is completed when tender documents are prepared.

Schedule 1 – Contract information

Item 21 – Separate work by separate contractors (**clause G9**)

The contract includes provisions for the owner to appoint separate contractors to undertake defined items of work. Generally, this is intended to allow for artists or specialist contractors to be appointed to complete special components of the project. As coordination with such separate persons may affect the contract price, it is preferable that this item is completed when tender documents are prepared.

Item 22 – Commissioning tests for practical completion (**clause M1**)

This item allows the architect and other consultants to nominate any specific commissioning tests to plant and equipment that must be satisfactorily completed before the works will be considered to have reached practical completion. These tests are tests of plant and equipment, such as air conditioning, lifts or heating systems.

Item 23 – Estimated date for practical completion (**clauses L1, L2 and M1**)

The date for practical completion must be defined in the contract when it is executed. The architect may nominate a date for practical completion at the time that tender documents are prepared or require the date to be nominated by the tenderers at the time that tenders are submitted. The date takes into account the provisional periods of delay in **items 25 and 26 of schedule 1** and may be subject to negotiation before the contract is executed. It is not a contractually binding estimate but is set out as an indicative date to assist with the administration of the contract.

Item 24 – Defects liability period (**clause M11**)

The contract includes a default provision for a defects liability period of 12 months. Depending on the nature of the project, a shorter or longer period may be appropriate. As the length of the period may affect the contract price, if the default is not to apply, it is preferable that this item is completed when tender documents are prepared. Before the contract is executed this item may be subject to negotiation.

Item 25 – Date for submitting progress claims (**clause N3.1**)

The default date is the 1st day of the month. The architect should nominate the most appropriate date for the project in the tender documents, but it may be subject to negotiation before the contract is executed.

Item 26 – Additional Information to be included in the progress claim (**clause N2**)

The contract defines the information to be provided by the contractor when progress claims are submitted. Where additional information is required, for example where a financial institution has particular requirements, these should be included in this item. As these additional items may affect the contract price, it is preferable to identify these at the time of tender. Before the contract is executed, these items may be subject to negotiation.

Item 27 – Proportion of contractors fee to be paid with progress claims (**clause N3.3, N3.4**)

This item only applies where the contractor is to be paid a fixed fee under item 4.

This item defines the percentage that will allow the architect to calculate that proportion of the total fee the contractor must include in the regular progress claims submitted under **clause N3**. An appropriate percentage may be subject to negotiation and could depend on the size of the estimated contractor price and the length of time the works are expected to take based on the contractor's estimated date of practical completion.

Item 28 – Interest rate on overdue amounts (**clause N15**)

Where a payment by one party to the other is overdue, the party who should have made the payment is liable to also pay interest from the due date. The interest rate is defined in this item. As the rate may affect the contract price, it is preferable to nominate the rate at the time of tender, but it may be subject to negotiation before the contract is executed. The default interest rate is 10% per annum.

Schedule 1 – Contract information

Item 29 – Governing law (**clause R8**)

The default provision is the law of the state or territory where the site is located. However, this should not be altered lightly, or without getting legal advice. If varied from the default provision, it may be subject to negotiation before the contract is executed.

Item 30 – Official documents (**clause B3**)

Anything inserted in this item is an exception to the ordinary requirement of **clauses A2** and **A4**. **Item 30a** sets out whether the contractor needs to get any official documents to begin the works and **item 30b** whether the owner needs to get any official documents to complete the works. Because a requirement to obtain (or not obtain) a particular official document may affect the contract price, known requirements, such as that a particular document can only be obtained by one party, not the other, should be reflected in this item at tender. However, these items may be subject to negotiation before execution of the contract.

Schedules 2a and 2b – Special Conditions

Schedule 2a allows for special conditions to be included in the contract. The default order of precedence (reflecting common practice) establishes that the special conditions take precedence over the general conditions.

As noted in the **Introduction** to this guide, where it is necessary to amend the general conditions, it is preferable to include special conditions in **schedule 2a** (if necessary by inserting additional sheets there), rather than by inserting or striking out words in the general conditions. If special conditions are to be included, they must be invoked by the parties striking out “No” in the first part of **item 3** and the special conditions being inserted in **schedule 2a**.

Schedule 2b provides standard special conditions to vary the general conditions for projects where the owner remains in occupation during construction of the works.

Therefore, if the owner is to remain in occupation, the standard special conditions must be invoked by the parties striking out ‘No’ in the second part of **item 3** of **schedule 1**. Whichever options are selected, each party must sign where shown in **item 3**.

Disclaimer

As drafted, the ABIC CP-2014 C contract is not intended to be used for housing projects and is not warranted for use on domestic projects.

Each state and territory may have specific legislation which limits or prohibits parties from undertaking a domestic project using a cost plus contract, or may require you to adapt the CP-2014 C to comply with that legislation.

It is essential that before using CP-2014 C for *domestic* works, you seek legal advice.

Schedule 3 – Order of precedence of documents

This schedule allows you to change the standard order of precedence between contract document categories set out in **clause B2**, and for establishment of detailed orders of precedence within the contract document categories listed in **clause B2**.

However, the standard order of precedence of the contract document categories should not be altered lightly or without legal advice.

The standard order of precedence set out in **clause B2** is:

- any special conditions shown in **schedule 2a**
- any owner occupier special conditions shown in **schedule 2b**
- the conditions set out in the contract and **schedule 1**
- the specifications for the works in the order shown in **schedule 3**
- the drawings for the works shown in **schedule 3**
- any other documents in the order shown in **schedule 3**.

It is necessary to list the specifications, drawings and other documents that are incorporated in the contract documents in the order of precedence required for the project. However, the nature of a cost plus contract is such that at the beginning of and even throughout the project, there may be documents or specifications that have not yet been decided on by the owner and so have not yet been created.

Generally, the following order is considered appropriate for most cost plus projects, even if some of these documents have yet to be created, specified or decided on:

- specifications
 - architectural specification
 - structural specification
 - mechanical specification
 - electrical specification
 - hydraulic specification
 - landscape specification
- drawings
 - architectural drawings
 - structural drawings
 - mechanical drawings
 - electrical drawings
 - hydraulic drawings
 - landscape drawings
- other documents
 - geotechnical survey drawings
 - survey drawings.

Disclaimer

If it is necessary to amend the order of precedence when the documents are finalised, the parties should seek legal advice about how to do so.

Section 4 – Site information

This schedule allows you to insert site information relevant to the particular project. Site information includes any reports, surveys, test results, plans, specifications, computations or other information such as foundation data, soil tests or geotechnical tests.

The contract requires the owner as part of the tender process to give to the contractor any information that it has regarding the site. Where the owner has any such information at tender it should be included in this schedule.

Commentary on the purpose of this provision and on the type of information that should be included in this schedule is given in this guide's **section F**.

Schedule 5 – Forms of guarantee

Some financial institutions may have a standard form of guarantee, but **schedules 5a, b and c** provide forms for contractor and owner unconditional guarantees that meet the requirements of the contract, if these types of security are nominated in **item 8b** of **schedule 1**.

The contract requires the guarantee to be from a recognised financial institution and be in a form approved by the owner (or the contractor, for security provided to the contractor). If a different form of guarantee is proposed, it must contain the same provisions as those in the standard forms or be approved by the party who will receive the unconditional guarantee.

Schedule 6 – Provisional sums where particular person engaged

Use **Schedule 6**, in accordance with **clause K1**, to record the details of all provisional sums where a particular person, tradesperson or artist is to perform work. The schedule provides space to state the sum allowed, a description of the work covered by each sum and the particular person who will carry out that item of work.

The architect should complete this item for issue with the tender documents, but they may be subject to negotiation before the contract is executed.

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' in the column headed 'Particular person'.

If you require more items in Schedule 6 and there is insufficient space, add an additional schedule by copying Schedule 6. Attach it to the contract and ensure all parties initial the attached Schedule.

Schedule 7 – Prime cost sums

Use **Schedule 7**, in accordance with **clause K1**, to record the details of all prime cost sums including a description of the item(s) covered by each sum, the quantity of the item(s) and dollar rate for each item, the Total Sum Allowed and (if applicable) the intention to use a particular person (or their name, if known) who will supply or supply and install each item.

The Total Sum Allowed is calculated by multiplying the quantity of the item(s) by the applicable rate.

The architect should complete this item for issue with the tender documents, but they may be the subject of negotiation before the contract is executed.

The owner may intend to use a particular person other than the contractor or contractor's subcontractor. This intention must be stated in this schedule before the contract is executed, and if known, the name of the particular person (meaning the identity of the subcontractor) shown. 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' in the column headed 'Particular person'.

If you require more items in **Schedule 7** and there is insufficient space, add an additional schedule by copying **Schedule 7**. Attach it to the contract and ensure both parties initial the attached **Schedule 7**.

Schedule 8 – Items to be supplied by Owner

In some projects the owner may wish to supply certain items that are to be incorporated in the works.

For items that the owner will supply, **schedule 8** distinguishes between those to be installed or fitted by the contractor (with an allowance being included in the contract price), and those that will be installed by the owner (with no allowance being included in the contract price).

Forms

There are Forms listed at the back of this user guide for use by the architect and the contractor. The architect's and contractor's forms are available in digital format for purchase and download from the Institute (and via Acumen online) and from Master Builders Australia.

Reference Copy

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 or an urgent instruction at any time.
- A party may dispute the decision of an architect.

Comments

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

Clauses A2 and **A5** set out the specific obligations and warranties given by the contractor and the owner.

A party can dispute a decision (or failure to act) of the architect under **clause A8**. To do so, the party must give the architect written notice of the dispute within 20 working days of the date of the decision or of becoming aware of the failure of the architect to issue something. 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.

Clause A9 clarifies that the contractor cannot assume that a claim has been accepted or is valid merely because the architect fails to issue a document required to be issued in respect of a claim.

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.
- The contractor must provide a contract price estimate.

Comments

Given the nature of a cost plus contract, it is unlikely that the architect would have prepared drawings or specifications of many of the important contract documents and the owner would have yet to decide parts of the scope, design, materials, fittings or finishes. **Clause B1.1** allows the contractor to commence the works with only those documents that have been created or specified, even though many other contract documents have not.

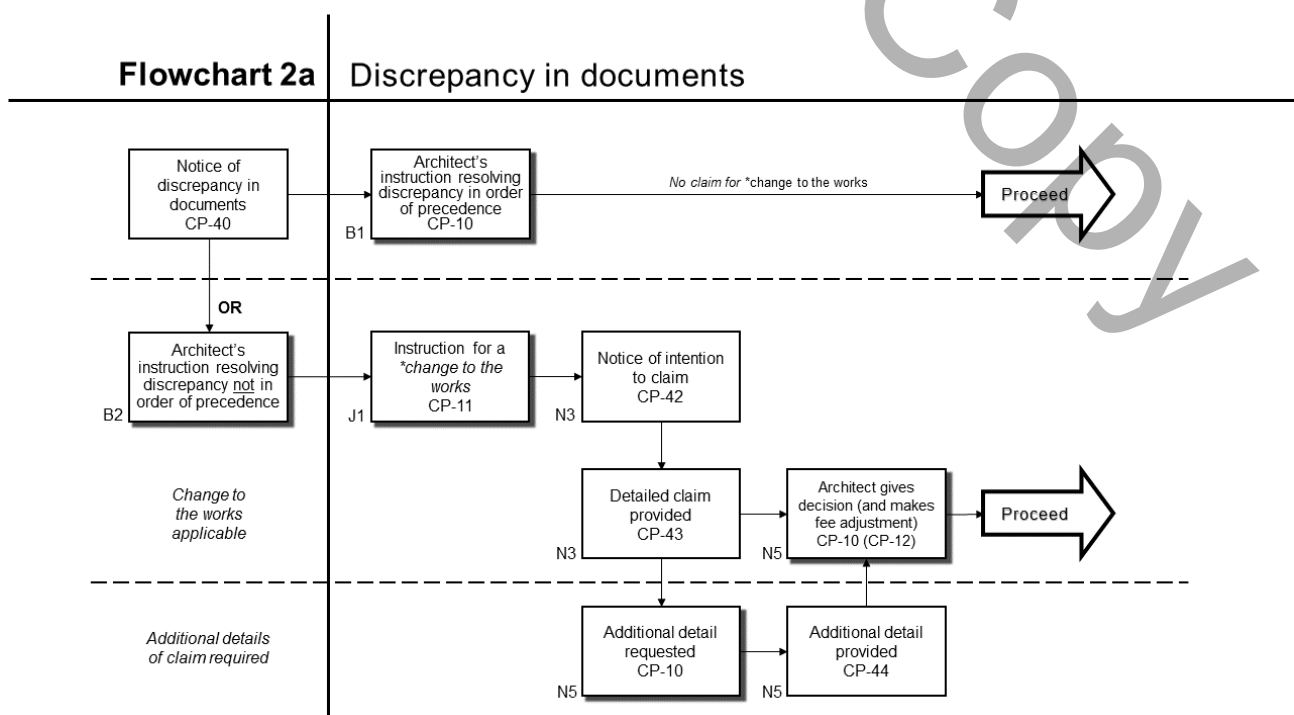
Clause B1.2 requires the owner or the contractor to notify the architect promptly if they discover a discrepancy, ambiguity or omission in the contract documents. Once notified, the architect must promptly issue an instruction to the contractor.

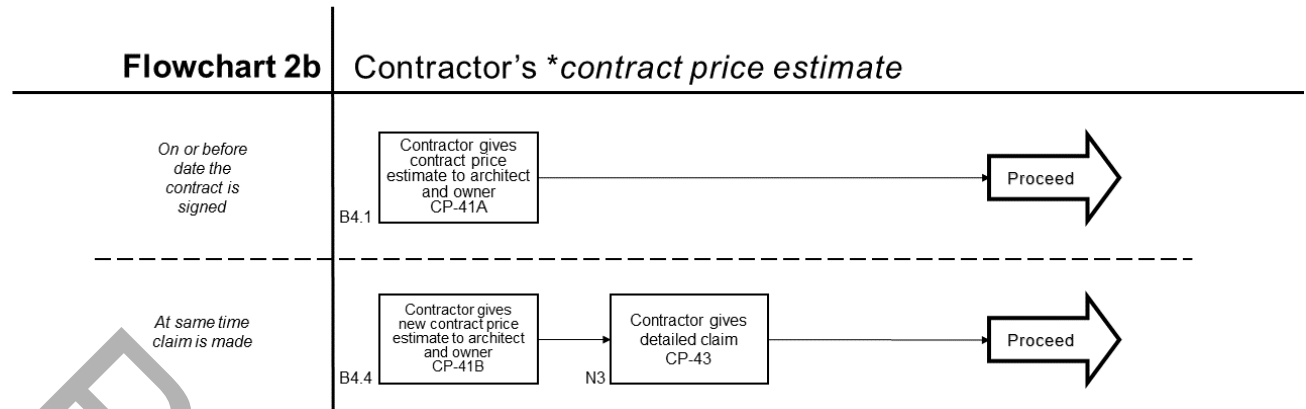
Clause B2 sets out the order of precedence of documents. Under **clause B2.3**, where a fixed fee applies, even if the architect issues an instruction to resolve an omission, such an instruction is an instruction for a change to the works under **section J**.

Clause B4 requires the contractor to give the architect and owner an estimated contract price. The estimate must be given on or before the day the contract is signed.

The contract price estimate is a fair and reasonable estimate by the contractor of the likely cost of building works (plus GST) that the owner will pay to complete the project. It is intended that the contractor will give a good estimate of the likely amount the owner will pay for the project, to assist the parties to calculate appropriate amounts of security and insurance cover for the project. The estimate is not intended to be taken as a representation by the contractor, for which the contractor can become liable for damages.

The contractor is also required to review and revise the contract price estimate to ensure it is current and correct each time a progress claim is made. The contractor must give the new estimate in writing to the architect and owner at the same time a claim is made under **clause N3**.





Links

Schedule 3 sets out the order of precedence of documents.

Architect's forms

- **CP-10** Architect's instruction.
- **CP-11** Instruction for change to the works
- **CP-16** Adjustment of estimated date of practical completion

Contractor's forms

- **CP-40** Request for information/instruction/notice.
- **CP-41A** Notice of contract price estimate
- **CP-41B** Notice of new contract price estimate
- **CP-42** Notice of intention to claim.
- **CP-43** Details of claim.
- **CP-44** Additional information.
- **CP-59** Notification of official document.

Section C - Security

Key points

- The contractor has to give the owner security for its obligations under the contract either by unconditional guarantee or by cash retention.
- The contractor can change the form of security during the contract.
- The amount of an unconditional guarantee given as security has to be adjusted in line with increases in the estimated contract price.
- The owner may have to give the contractor security for its obligations under the contract by unconditional guarantee.
- The owner has to release half of the security from the contractor at practical completion and the balance on the issue of the final certificate.
- The contractor has to release all of the security from the owner at practical completion.
- The parties can only draw on the other's security in specified circumstances.
- There are special rules for the provision of security for off-site plant or material.

Comments

Contractor's security

Clause C1 allows the owner to nominate the type of security from the contractor before the contract is executed, normally at the time that tenders are called. If no alternative is nominated, cash retention applies (see **items 8b** of **schedule 1**).

If the owner does not nominate the type of security the contractor may choose to give either cash retention or unconditional guarantee as indicated in the tender response. The amount of security is usually 5% of the contract price estimate but this may be varied before the contract is executed, again usually at the time tenders are called (see **item 10** and **item 11** of **schedule 1**).

If the security is by unconditional guarantee and the owner is registered for GST, the value of unconditional guarantees to be provided is determined by applying the percentage in **item 11** to the contract price estimate (excluding the GST component of the contract price) as calculated and adjusted during the contract under **clause B4**.

Clause C2 sets out the procedure if cash retention is used. Note that holding the cash retention in a legal practice or accounting firm's trust account will not satisfy the owner's obligation under **clause C2.2**.

Clauses C3 and **C4** set out the procedure if unconditional guarantees are selected.

Clause C4 sets out the procedure for increasing the amount of security given by way of unconditional guarantees. Where contract price estimates increase by more than 20% (and each subsequent 10% step after that) of the original contract price estimate made under **clause B4.4**, additional security must be given. During construction of a cost plus project, the contract price can change as the owner and architect decide on plans, materials and details. To ensure the architect and owner are kept up to date about what the project is likely to cost, **clause B4.4** requires the contractor to regularly revise the contract price estimate.

If an unconditional guarantee is given under **clause C3** as security, **clause C4** gives either party a mechanism to effect a 'top-up' of the security, at the owner's cost. This mechanism ensures that the amount of the security reflects the cost of the project. The contractor decides (**clause C4.3**) whether to give that security by way of an additional unconditional guarantee (**clause C4.4**), or to allow the owner a further cash retention (**clause C4.5**).

No.	Action	Clause	Form
1.	Contractor must make original contract price estimate	B4	CP-41A
2.	Contractor must make a new contract price estimate if contract price exceeds the original estimate.	B4.4	CP-41B

Section C - Security

No. Action	Clause Form
3. Owner may notify contractor to give additional security.	C4.2 CP-21
4. Contractor must decide and tell the owner before the next progress claim whether to give owner two additional unconditional guarantees, or allow further cash retention in the next progress certificate.	C4.3 CP-46A
5. The contractor must promptly advise the cost of providing the additional unconditional guarantees.	C4.4a CP-46B
6. Owner must pay or reimburse contractor for the cost of providing additional unconditional guarantees and architect must make an adjustment for this in the progress payment immediately after the additional unconditional guarantees given.	C4.4d C4.4e
7. If the contractor cannot or does not provide new replacement guarantees, then owner may top-up the security by way of cash retention in addition to any retention under clause C2 or C5.4, in the next progress certificate.	C4.5
8. If contractor allows further cash retention but later gives additional unconditional guarantees, then the owner must pay for or reimburse the cost of providing the unconditional guarantees and the architect must adjust for the cash retention in the next progress payment certificate.	C4.6

Clause C5 provides for the contractor to change the type of security during the course of the contract, and the procedure for doing so, as set out in the following table:

No. Action	Clause Form
1. Contractor gives written notice to architect.	C5.2 CP-50
2. Architect must take this request into account when preparing next progress certificate.	C5.2
3. To change from cash retention, the contractor must give the owner unconditional guarantees with a tax invoice and payment certificate.	C5.3a CP-50
4. The owner must then close the trust account and pay the contractor the amount held as cash retention within the period in item 12 of schedule 1 .	C5.3b, N7
5. The owner must provide the contractor with a copy of the bank statements regarding the closure of the cash retention account.	C5.3c
6. To change from unconditional guarantees, the contractor must allow the owner a cash retention of the same amount as the unconditional guarantees.	C5.4a, CP-50 C2.3
7. The owner must then hold the cash retention in a separate trust account (not a law or accounting firm trust account) and give the contractor evidence of this.	C5.4b, C2.2 C2.3
8. The owner releases the unconditional guarantees to the contractor when the amount shown on a certificate is paid within the period shown in item 12 of schedule 1 .	C5.4b, N7

Owner's security

Clause C14 requires the owner to provide security to the contractor if that is nominated in **item 9 of schedule 1** and sets out the form in which the security is to be given.

Drawing on security

Clause C6 (and **clause C15** for security provided to the contractor) set out the conditions under which security can be drawn upon. **Clause C7** (and **clause C16** for security provided to the contractor) set out the procedure for drawing on the security.

Section C - Security

Release of security

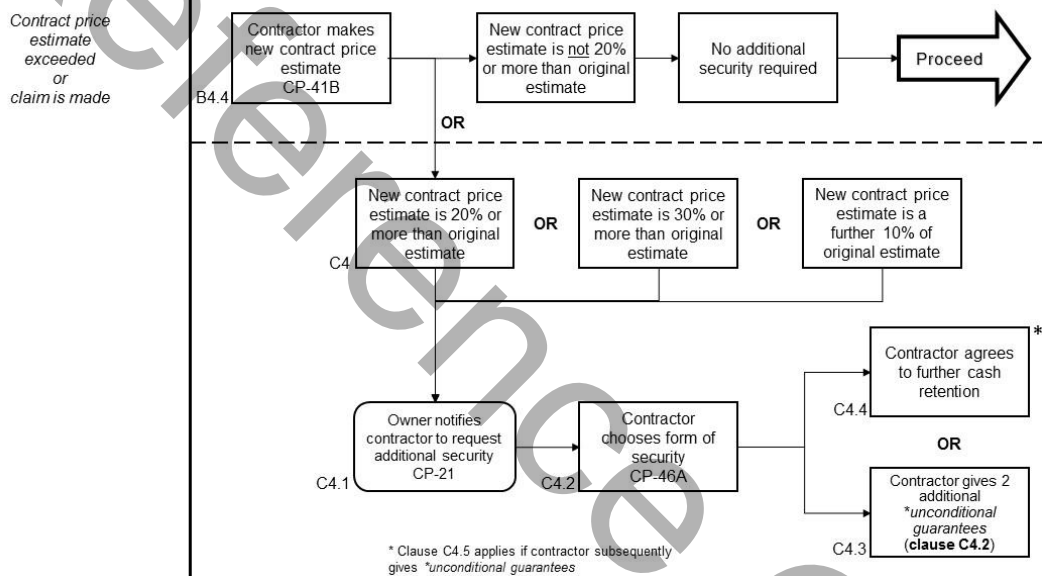
Clauses C8 and C9 respectively set out the procedure for release of the security to the owner at practical completion and final certificate.

Clause C17 sets out the procedure for release of security to the contractor at practical completion, termination or final certificate.

Off-site plant or materials

Clause C10 sets out the procedure and requirements for offering security in exchange for payment for off-site plant or materials. **Clause C11** sets out the procedure for release of security for off-site plant or materials. **Clause C12** sets out the conditions under which the owner can draw on the security provided for off-site plant or materials. **Clause C13** sets out the procedure for the owner to draw on the security.

Flowchart 3 Security to owner



Links

Items 8 to 12 of schedule 1 (type of security and percentages)

Section M (practical completion)

Clauses N11 to N14 (final certificate)

Architect's forms

- **CP-10** Architect's instruction.
- **CP-20** Notice of practical completion
- **CP-21** Notice to give additional security
- **CP-31** Final certificate
- **CP-33** Certificate – release of contractor's security

Contractor's forms

- **CP-46A** Security – providing bank guarantees
- **CP-46B** Security – notice of the top-up costs
- **CP-47** Notice to architect – works at practical completion
- **CP-49** Final claim – summary sheet
- **CP-50** Change in the form of security

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.

Comments

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 (the 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 risks borne by the owner do not include those risks which would ordinarily have been dissipated or subsumed by practical completion, namely, necessary work (being work including temporary work required to create the works), risk to a structure already on the site before the contractor gained possession of the site, on-site materials and equipment intended to be incorporated, and plant, tools and equipment which ordinarily would have been removed.

Before practical completion (when the contractor bears the risk), the contractor has to reinstate any loss or damage caused (**clause D5**) whether or not the loss or damage was caused by the contractor or the owner. However, the owner still indemnifies the contractor for the cost of reinstatement work to the extent that the owner (or its consultants, agents or representatives) was responsible for the loss or damage.

Links

Section E sets out the insurance requirements for the works.

Section M sets out when practical completion occurs.

Section E - Insurance

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.
- Normally, the contractor is responsible for these insurances, unless the owner chooses to obtain them.
- 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.
- The party responsible for obtaining the insurances must give notice to the other party that it has obtained them and provide details.

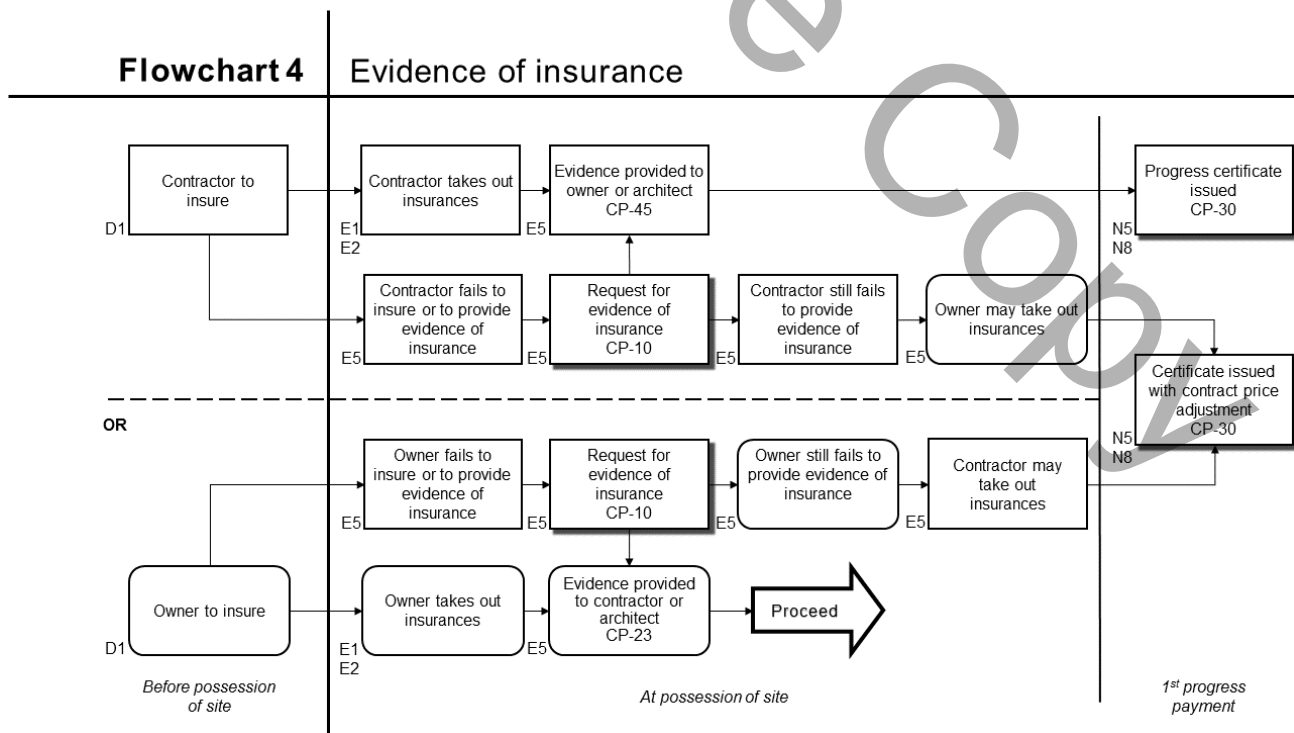
Comments

Clause E1 requires public liability insurance to be taken out. **Clause E2** requires contract work insurance to be taken out. **Items 13 and 14 of schedule 1** state whether the owner or the contractor has to take out the insurance. The party who is required to obtain the insurance must maintain that insurance until the issue of the final certificate.

The required terms of the insurances are specified in **clauses E1, E2 and E4**.

The party responsible for obtaining the insurances has to satisfy the other party that the required insurances are in place before or at the time final possession of the site is given. In the alternative, the party responsible for obtaining the insurance must provide evidence and details of them when requested or the other party is entitled to take them out and recover the premium costs by an adjustment in the next progress claim.

Under **clause E5**, if the contractor is required to take out the insurances, **clause N8.1b** entitles the owner to withhold the first progress payment until satisfied that the insurances in accordance with the contract are in place.



Section E - Insurance

Links

Section D (Liability)

Items 13 and 14 of **Schedule 1** sets out who takes out the insurance

Clause N8.1.b sets out the conditions for withholding of first progress payment under certain conditions

Architects forms

- CP-23

Contractors forms

- CP-45
- CP-51

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 before taking possession.
- The contractor must notify the architect if the contractor discovers a latent condition, a valuable item, dangerous or contaminated material or an encroachment on the site.

Comments

Owner to give possession of the site

The owner has to give the contractor possession of the site by the date shown in **item 19** of **schedule 1**. The owner does not have to do this until:

- the owner, or the architect as the owner's agent, receives a copy of the contract signed by both parties; and
- the owner is satisfied that the insurances to be provided by the contractor are in place (see **section E**); and
- the owner or architect has received any official documents required to begin the works.

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" is not defined in the contract, but includes, for example, requiring the owner or owner's representative complying with work health & safety legislation such as necessary site induction requirements.

Latent conditions or valuable items

No. Action	Clause
1. If the contractor discovers a latent condition or a valuable items, it must notify the architect in writing within 5 working days of the discover seeking instructions	F5
2. The architect must promptly give the contractor a written instruction	F6
3. The contractor must comply with the instruction.	A2

Dangerous or contaminated material

No. Action	Clause
1. If the contractor discovers dangerous or contaminated material, it must immediately notify the architect and the relevant authority	F7
2. The contractor must take all necessary action in accordance with an official document and give a copy of the document to the architect immediately	F7

Encroachments

No. Action	Clause
1. If the contractor discovers that:	F8

Section F - The Site

<ul style="list-style-type: none">• an adjoining structure encroaches onto the site or• requires support from the site and• the contract documents do not deal with this situation, then the contractor must do the following: <ul style="list-style-type: none">• make no changes to the works except to stabilise the situation.• immediately suspend the necessary work in the vicinity.• promptly request an instruction from the architect.	
2. The contractor must continue with other work not affected by the encroachment	P1

Links

Item 19 of schedule 1 (date for possession of the site)

Section E (insurance)

Architect Forms

- CP-11

Contractor Forms

- CP-40
- CP-42
- CP-43
- CP-44
- CP-55

Section G - Building the works

Key points

- The owner has to 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.
- The architect can instruct the contractor to open up, test or suspend elements of the works.
- The owner and the contractor each have obligations to the other where there is use of separate contractors.

Comments

Setting out the works

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

Contractor's obligations

The contractor has various obligations to the owner set out in **clause G2** including having in place a quality system if required by **item 20 of schedule 1**. The contractor has to appoint a representative, whose contract details need to be stated in **item 1 of schedule 1**.

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.

Opening up or testing the works

Under **clause G5**, at any time the architect can instruct the contractor to open up or carry out tests on elements of the works. **Clause G6** enables the contractor to claim the direct cost of opening up, testing and reinstating the works where that process does not reveal defective work.

Suspension and recommencement of the works

Clause G7 entitles the owner to request that the architect instruct the contractor to suspend the works. The contractor must promptly comply. If the suspension lasts for 15 working days or more, the contractor may remove from the site any materials or equipment not yet paid for and any plant and equipment. If the suspension continues for more than 20 working days, the contractor may terminate the contract under **clause Q13**.

Prior to the contractor terminating the contract, if the architect instructs the contractor to recommence the works, the contractor must comply with the instruction. If the contractor has left the site, the contractor must promptly return and proceed with the works.

Separate contractors

The owner may use separate contractors to do some of the works or other things if it has set them out in **item 21 of schedule 1** at execution of the contract. The owner is responsible under **clause G9** for ensuring that each separate contractor cooperates with the contractor in carrying out its works. Under **clause G10** the contractor has to promptly give the architect any information about the site so that a potential separate contractor can figure out its price and plan its activities.

Links

Item 20 of schedule 1 (quality system)

Item 21 of schedule 1 (separate contractors)

Section G - Building the works

Architects forms

- CP-10
- CP-11

Contractors forms

- CP-40
- CP-41A
- CP-41B
- CP-42
- CP-43

Section H - Duty to report

Key points

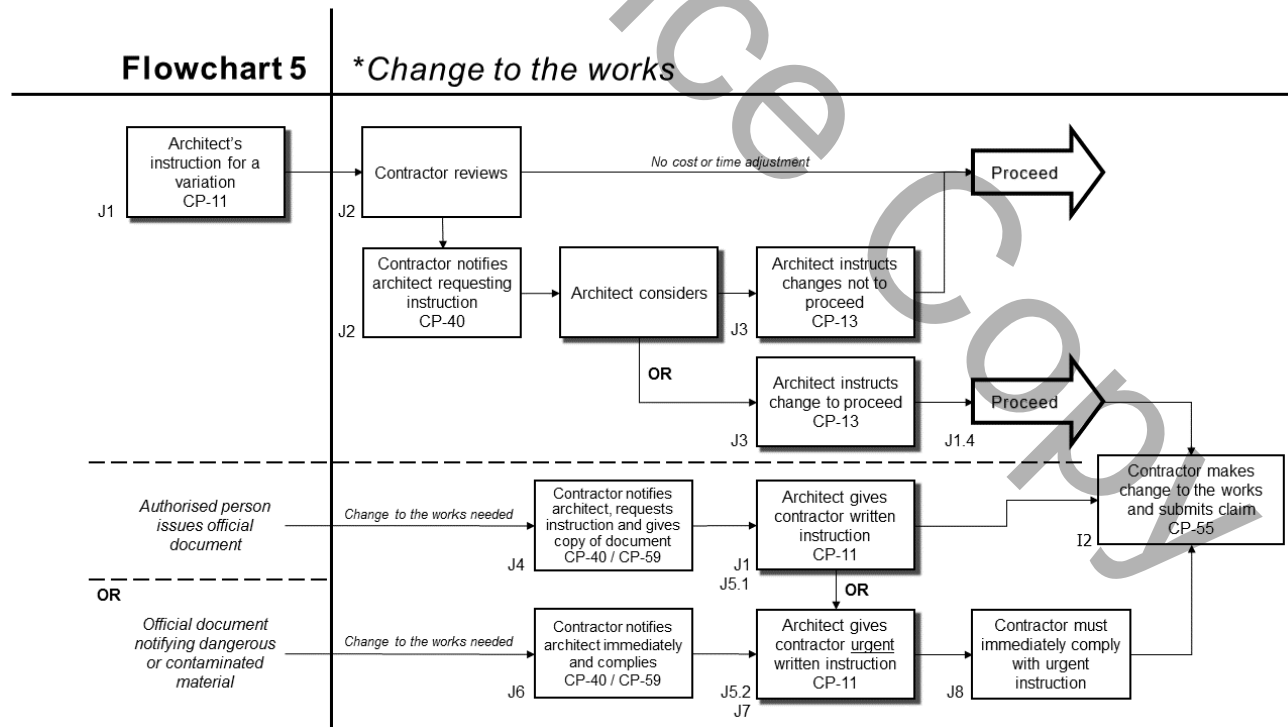
- The contractor has to provide documents to the architect.
- The architect has to provide details of the progress of the works to the owner and the contractor.

Comments

The contractor must give the architect all documents, including copies of receipts, invoices, time sheets, claims and other documents which make up the cost of building work as defined in **clause N1.2**, as well as information relevant to costs of labour and material expended and any changes to the work. The contractor must give the architect all this documentation within 10 days after the contractor receives it.

Clause H2 requires the architect to provide a written report to the owner and the contractor about the progress of the works each month within 21 working days after receipt of a claim from the contractor under **clause N3** which sets out the procedure for a contractor making a progress claim. The report must include five items:

1. certificates that the architect has provided to the contractor showing payments due per **clause N5**.
2. details of how the amounts contained in the certificates provided compare to an estimate of the contract price – see **clause B4**
3. details of the progress of the works, including any notified delays
4. how the progress of works compares to an estimate of the date for practical completion which might have been set out in **schedule 1 item 23** and
5. details of any change to the works and fees and costs associated with any change to the works under **section J**.



Links

Clause N1.2

Clause N5

Clause B4

Clause L1

Section J

Architects forms

- CP-22 Report on progress

Contractors forms

- CP-44 Additional Information

Reference Copy

Section I - Adjustment of the fixed fee

Key points

As indicated earlier in this User Guide, the ABIC Commercial Cost Plus 2014 Contract provides two alternatives for calculating the contractor's fee. **Section I** only operates where the contractor's fee is fixed and **item 4(b)** of **schedule 1** is completed.

Section I sets out how and when the fixed fee is able to be adjusted.

Comments

The architect may instruct the contractor to make a change to the works under **clauses J1, J5 or J7**. If a change to the works results in an increase to the cost of building work, the contractor is entitled to an adjustment to the fixed fee. That adjustment to the fee is calculated by multiplying the relevant percentage in **item 4b** by the cost of the works to the contractor of the change to the works. The contractor cannot receive any other payment resulting from a change to the works.

Clause I3 relates to adjustments to the contractor's fee where the cost of the building work attributable to a particular provisional sum or prime cost increases as well as increases to the amounts shown in **schedule 6** for provisional sums or **schedule 7** in relation to prime cost sums. The amount that the contractor is entitled to is calculated by multiplying the relevant percentage in **item 4(b)** of **schedule 1** by the difference between the costs of the works to the contractor of a change to the works when compared with the amounts of the provisional sum or prime cost sum set out in the schedules.

Links

Section J (Changes to the works)

Section K (Provisional and Prime Cost Sums)

Architects forms

- CP-10
- CP-11
- CP-12
- CP-13
- CP-14

Contractors forms

- CP-42
- CP-43
- CP-44
- CP-55
- CP-57

Section J - Instructing changes to the works

Key points

- Because this is a cost plus contract, the idea of variations is not incorporated in the terms of the contract. There is a need, however, to cover the situation where a change to the nature or extent of the works changes the cost of building work referred to as a **change to the work*.
- This process is necessary only where the contractor is paid under a fixed fee arrangement.

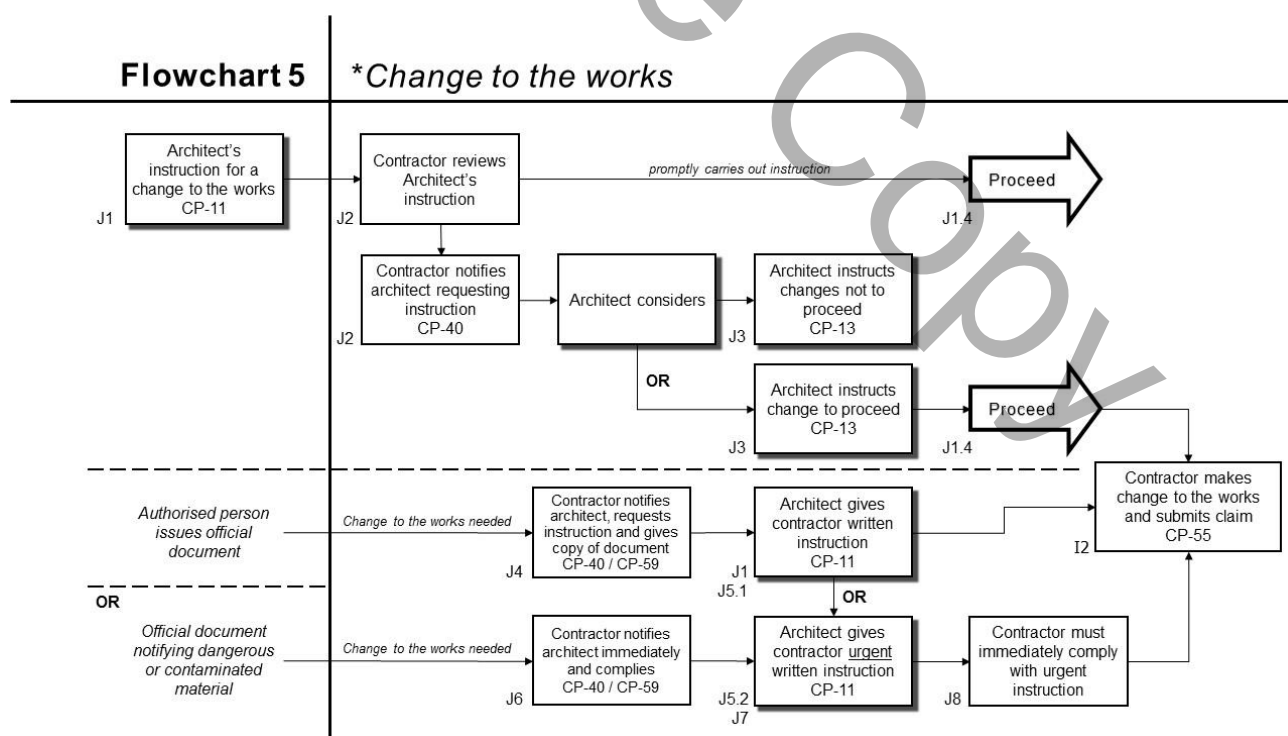
Comments

Clause J1 enables the architect to give the contractor written instructions for a change to the works at any time, including an urgent instruction under **clause J7**. **Clause J1** also enables the contractor to request an instruction from the architect if the contractor considers that a change to the works may be required. Where an instruction is given by the architect, the contractor must promptly carry out the instruction. Under **clause J2** the contractor may request the architect to review any instruction given under **clause J1**. Where the architect receives a request for a review and a change to the works is not necessary to complete the works, the architect must issue a written decision to that effect.

Note: **Clause J1** is only invoked where a change to the works (see definition in **clause J1.3**) has a cost consequence for the cost of building works (as defined in **clause N1.2**). If there is no cost consequence, the architect merely notifies an instruction using form CP-10. The contractor must comply with all instructions given under the contract (**clause A2.1**).

Clause J4 and **J5** deal with the position where an official document provided to the contractor requires a change to the works. In that instance the contractor must notify the architect in writing promptly after receiving the official document and may request an instruction from the architect. The architect must issue an instruction either in accordance with **clause J1**, or **J7** for an urgent instruction. Where a change to the works arise because of dangerous or contaminated material, the contractor must immediately notify the architect and comply with the official document (**clause J6**).

Under **clause J7** and **J8** an architect may issue an urgent instruction for a change to the works and the contractor must immediately comply with that instruction.



Section J - Instructing changes to the works

Links

Section I (Adjustment to the fixed fee)

Clause A2.1 (Obligations of contractor)

Architects forms

- CP-10
- CP-11
- CP-13

Contractors forms

- CP-40
- CP-42
- CP-43
- CP-44
- CP-55
- CP-57
- CP-59

Section K - Provisional and prime cost sums

Key points

- A provisional sum is an allowance for work, the supply of materials or the connection of an infrastructure service, where the details were not known or finally decided at the time that the contract was executed.
- A prime cost sum is 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 has to instruct the contractor about provisional and prime cost sums.
- The contractor has to quote in relation to an architect's instruction.
- If the architect agrees with the quote, the architect must issue an instruction to proceed and accept the quote.

Comments

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 material or equipment that has not yet been fully specified. Allowances for provisional and prime cost sums are set out in **schedule 6** and **schedule 7** of the contract respectively, at the time the contract is signed.

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.

Architect can instruct a person

The owner can nominate a particular person other than the contractor to undertake the work associated with a provisional sum or to supply or supply and install an item covered by a prime cost sum (see **clause K2**, **schedule 6** and **schedule 7**).

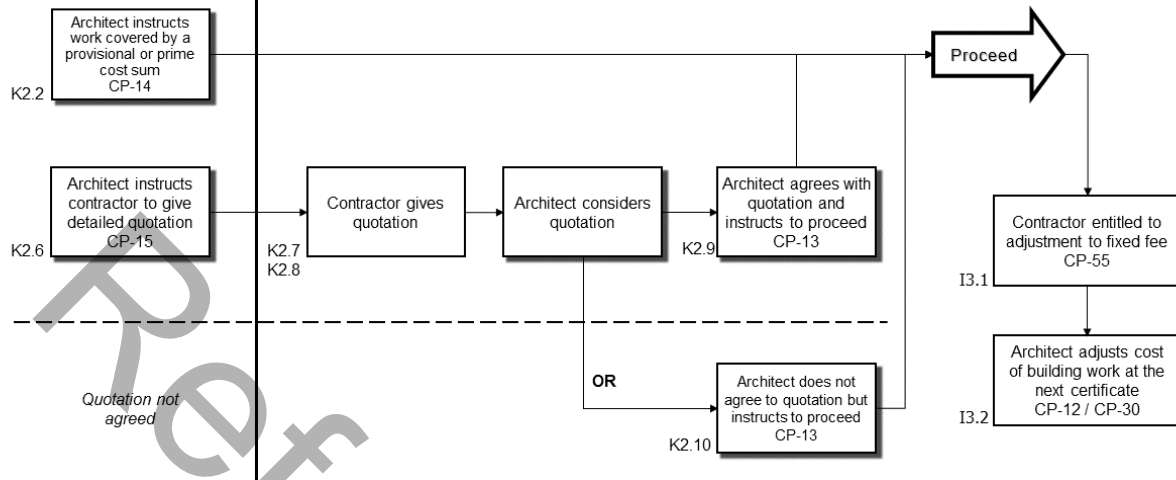
The contract anticipates that the particular person will become a subcontractor. However, if the contractor has a reasonable objection to the particular person and promptly notifies the architect, or the particular person notifies the architect that it is unwilling to accept the contractor's terms of subcontract, the particular person becomes a separate contractor.

If the particular person becomes a separate contractor, **clauses G9** to **G10** apply.

Section K - Provisional and prime cost sums

Flowchart 6

Provisional sums and prime cost sums



Links

Schedule 6 sets out the provisional sums included in the contract.

Schedule 7 sets out the prime cost sums included in the contract.

Clauses G9 to G10 (separate contractors)

Architects forms

- CP-10
- CP-13
- CP-14
- CP-15

Contractors forms

- CP-44
- CP-54
- CP-57

Section L - Adjustment of time

Key points

The contractor has to notify the architect, in writing, about delay and any effect on the estimated date for practical completion because of the delay.

Comments

Clause L1 requires the contractor where progress of the works is delayed to notify the architect in writing. The contractor must notify the architect within a reasonable time after becoming aware of the start or end of delay. Notification must cover the works being delayed, stating when the delay began, a description of the causes of the delay and an estimate of the number of working days affected and state when the delay ended and the effect of the delay on the estimated date for practical completion.

Clause L2 states that where a delay has an effect on the estimated date for practical completion, the date nominated in the notice replaces the date in **item 23 of schedule 1** which was the estimate made at the time of signing of the contract.

Links

Item 23 of Schedule 1

Architects forms

- CP-16

Contractors forms

- CP-60A
- CP-60B

Section M - Completion of the Works

Key points

- The contractor notifies the architect when the contractor thinks the works have reached practical completion.
- The architect inspects the works and decides when they have reached practical completion.
- The architect must give written notice of practical completion to the contractor and the owner within five days from completing the inspection.
- The contractor is required to correct any defects whether before or after the date of practical completion within an agreed time stated in an instruction from the architect.
- A defects liability period commences on the date of practical completion for the period shown in **item 24 of Schedule 1**.
- The contractor may be entitled to practical completion if the architect fails to act.

Comments

Practical Completion

In **clause M1**, the contractor has the obligation to bring the works to practical completion with due diligence and with all reasonable expedition. The estimated date for practical completion shown in **item 23 of Schedule 1** is not contractually binding and is just an estimate. The works have reached practical completion when in the architect's reasonable opinion:

- they are substantially complete; and
- any incomplete works or defects are few and relatively minor and will not unreasonably affect occupation; and
- use or commissioning tests in relation to plant and equipment shown in **item 22 of Schedule 1** have succeeded; and
- approvals for occupation have been obtained and the parties have given the architect all official documents for those approvals.

Under **clause M2**, at least 10 working days before the contractor expects that practical completion will be reached, the contractor must inspect the works and prepare a detailed schedule of defects and give a copy of that list to the architect. The contractor must also give the architect a written timetable for the correction of defects.

Under **clause M3**, the contractor must notify the architect when the contractor believes the works are at practical completion. The contractor must give the architect a detailed schedule of defects showing that each item has been corrected or completed to the satisfaction of the contractor. The architect must then commence its inspection of the works promptly and complete the inspection within an agreed time or within 10 working days. The architect must issue a notice or instruction under **clause M4, M5 or M6**. Within the inspection period the contractor must give the architect copies of any official documents required for occupation and evidence that all commissioning tests set out in **item 22 of Schedule 1** have been successful.

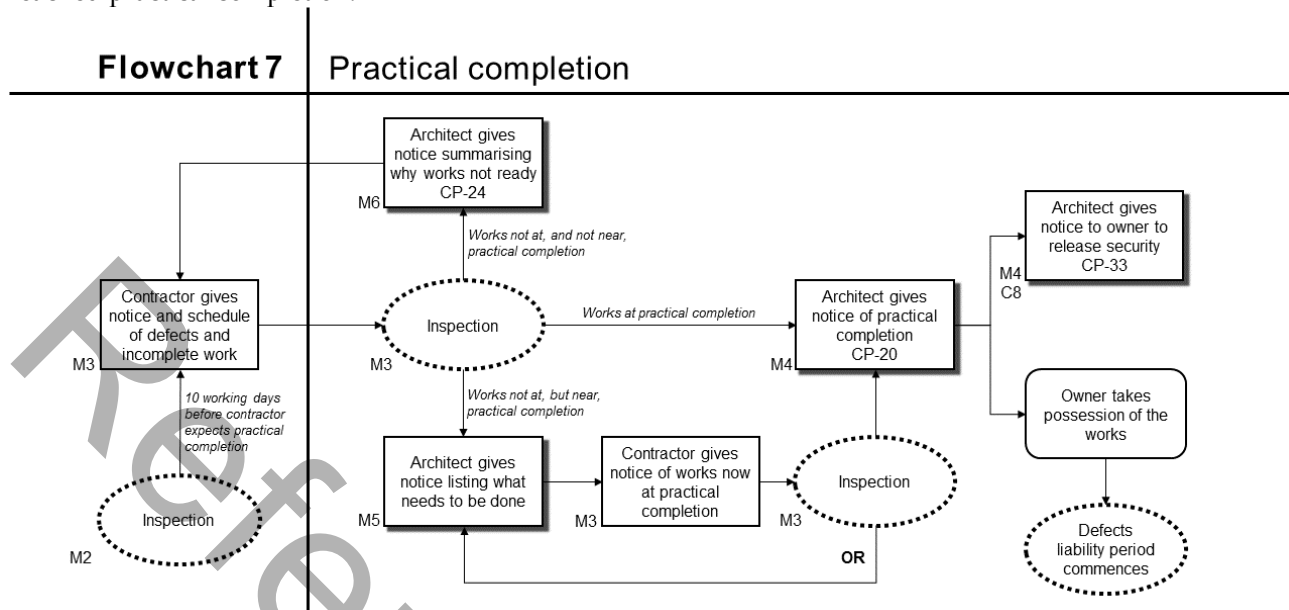
As stated **clause M4** is where the architect decides the works have reached practical completion. In that instance the architect must give written notice of practical completion to the contractor and to the owner within five working days after completing the architect's inspection. The notice must state the date when practical completion is reached. At the same time, the architect must notify the owner in writing that security must be released in accordance with **clause C8**.

Clause M5 and M6 deal with the situation respectively if the works are not at, but are near practical completion and if the works are not at and not near practical completion.

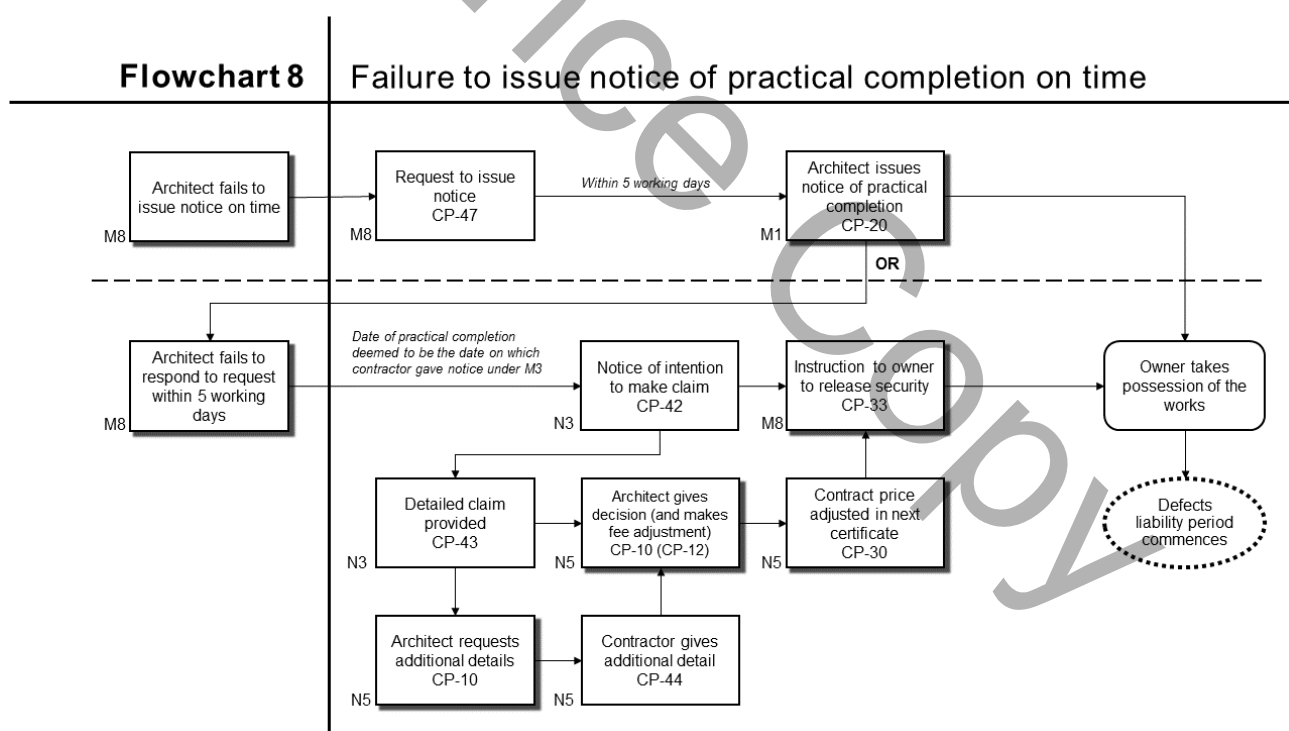
Clause M7 deals with the situation where the architect gives notice under **Clause M5 or M6**. In those instances, the contractor must promptly do whatever is necessary for practical completion to be reached. The contractor must notify the architect, in writing, when it considers the works have reached practical

Section L - Adjustment of time

completion. The procedures under **clauses M3 to M7** apply until the architect decides that the works have reached practical completion.



Under **clause M8** if the architect fails to issue a notice under **clause M4, M5 or M6** within five working days after completing the architect's inspection, the contractor may request that the architect issue a notice. If the architect fails to issue a notice within five working days of the contractor's request, the date of practical completion is the date claimed in the contractor's notice under **clause M3**. At the same time securities must be released in accordance with **clauses C8 and C9**.



Clause M9 contains the requirement that the contractor must correct defects, including before or after the date of practical completion with an agreed time as stated in the instruction from the architect or if there is no time set out in that instruction within 10 days after receiving that instruction. The contractor must bear the costs of correcting defects.

Clause M10 deals with the situation where the contractor fails to correct a defect within time. In that instance the owner may use another person to correct a defect at the cost of the contractor if the contractor

Section M - Completion of the Works

has already been paid for the work that remains defective. Where the owner is required to use another person to rectify a defect the owner is entitled to deduct that amount from the next certificate payable under **clause N5** (see **section N** of this User Guide).

Clause M11 sets out when the defects liability period starts and finishes. The defects liability period is the number of months shown in **item 24 of Schedule 1** and begins on the date of practical completion. The architect may notify a second defects liability period and if so, this notification must be given at the time of the acceptance of the corrected work.

Clause M12 establishes that if during the defects liability period the contractor is aware of any defect, it must promptly return to the site and correct the defect. That obligation continues until the defect is corrected and continues beyond the defects liability period. The architect cannot issue the first instruction to correct an outstanding defect after the end of the defects liability period, unless it is to rectify a latent defect and the final certificate has not been issued.

Links

Item 22 of Schedule 1

Item 23 of Schedule 1

Item 24 of Schedule 1

Clauses C8 and C9

Architects forms

- **CP-20** Notice of practical completion
- **CP-24** Notice of works not at but near practical completion
- **CP-25** Notice of works not at and not near practical completion

Contractors forms

- **CP-47** Works at practical completion

Section N - Payment for the Works

Key points

- The contract price is the key to a number of other operative provisions in the contract, including the basis of the contractor's fee shown in **item N1.4a**.
- The contractor may submit to the architect one claim for a progress payment each month. The architect must assess that claim and issue the contractor and the owner with a certificate setting out any payment due within 10 business days after receiving the claim.
- A progress certificate issued by the architect to the contractor is a required procedure under this contract.
- The contractor must prepare a tax invoice and submit it with a certificate to the owner for payment.
- There are specified requirements for the final certificate that must be met.
- Each party should be aware of their obligations under security of payment legislation in each state and territory.

Comments

This section sets out the way the contract price is to be calculated under the contract. The contract price is the cost of the building work plus any contractor's fee plus GST. This section also contains the owner's obligation to pay progress claims and the final claim and sets out the procedures that apply when the contractor claims progress payments and the architect assesses those claims.

Clause N1 sets out that the contract price is the cost of the building works plus the applicable contractor's fee which covers overheads and commission, plus GST. **Clause N1.2** then sets out the items under which the contractor may make a claim. These items make up the cost of building work. **Clause N1.3** also sets out five areas of costs or expenses which are to be included in the cost of building work.

Clause N1.4 provides that the contractor's fee is either a percentage fee shown in **item 4a** of **Schedule 1** which is applied to the cost of the building works, or the fixed fee set out in **item 4b** of **Schedule 1**. The fixed fee can be adjusted in accordance with the procedures set out in **Section I**.

Clause N3 sets out the progress claim procedure for the contractor. The contractor may submit one claim to the architect each month on or after the day of the month shown in **item 25** of **Schedule 1**, unless the owner and the contractor agree to a different date. The claim must set out the contractor's valuation of the contractor's fee calculated in accordance with **N1.4a** where the contractor is paid a percentage of the cost of building work. Other parts of the claim are the contractor's valuation of the cost of building work to date showing the breakdown against the items set out in **Clause N1.2**; the cost and brief description of any change to the works under **Section J** where a fixed fee applies; and a valuation of materials and equipment delivered to the site for incorporation in the works as well as the value of any off-site plant or material. The contractor must also include the **contract price estimate* made in accordance with **clause B4.4** up to and including the date of the claim (**clause N3.2**). These amounts must be assessed up to and including the day of the claim. They must also include that part of the contractor's fee payable because of the value of the work claimed, under **clause N3.3**.

Clause N3.4 requires a detailed breakdown of the fixed fee that relates to the operation of **Section J** or where a provisional sum or a prime cost item under **Section K** is carried out in the relevant period.

Clause N3.5 says that the claim must show the amount of GST included in the claim. The claim must also be supported by information set out in **item 26** of **Schedule 1** and include a declaration by the contractor that all wages and other entitlements have been paid, all monies due to subcontractors have been paid and all insurances required to be maintained by the contractor are in force.

Under **Clause N4**, if there is any off-site plant or material claimed, the contractor must warrant that the off-site plant and materials are as specified in the contract, are stored securely, are insured appropriately and will become the property of the owner on payment of the amount claimed.

Clause N5 sets out the procedure that the architect must follow in relation to progress claims. The architect

Section N - Payment for the Works

must issue a progress certificate within 10 working days after receiving a claim. The architect must assess a claim for a progress payment taking into account the items set out at **Clause N5.2**.

If the architect reasonably needs additional information to assess the contractor's claim, the architect must promptly ask the contractor for it.

Clause N6 requires the contractor to give the owner a tax invoice for the same amount as shown in the architect's certificate and vice versa., If the certificate indicates that the contractor must pay the owner an amount, the owner must give the contractor a tax invoice with the payment.

Under **clause N9**, if the architect fails to issue a certificate on time, the contractor may request the owner to ensure the architect issues a certificate within five working days of giving notice. If the architect then fails to issue the certificate within another five working days from the notice, the contractor is entitled to payment of the full amount of the progress claim within seven days after the notice was delivered. If the owner then fails to pay, the contractor may suspend the works, in accordance with **clause Q12**.

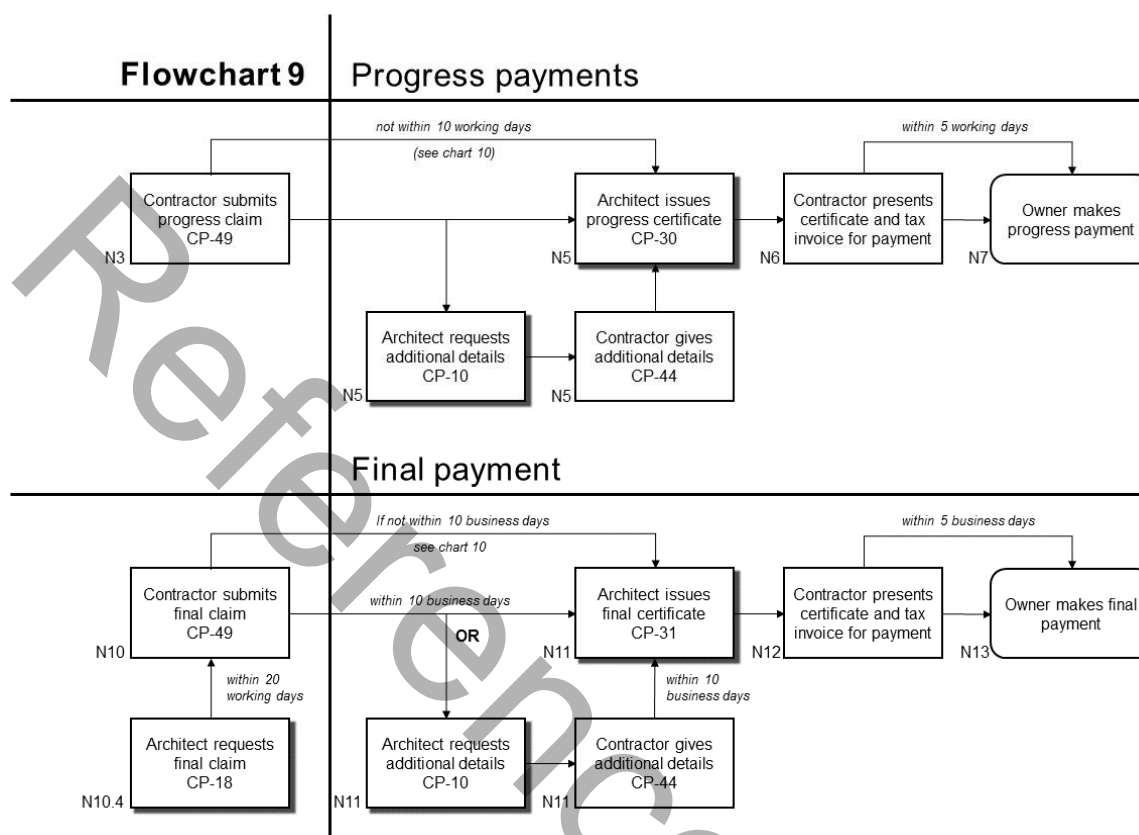
The contract also has special arrangements for the first progress payment and for the final claim and final certificate (see clauses **N8**, **N10** and **N11**). Before the owner is obliged to make the first progress payment, **clause N8** specifies that the contractor must have in place security by way of unconditional guarantees in accordance with **Clause C1** and insurances in accordance with **Section E** unless the owner has taken out the insurance.

Progress payments and final payments

No.	Action	Clause	Form
1.	The contractor may submit a progress claim for each month, supported by information and declarations required by the contract.	N3.1 N3.2	CP-48
2.	The architect must assess the claim	N5	
3.	The architect may request additional information reasonably required to assess the claim, but must do so promptly and continue to assess the remainder of the claim.	N5.4	
4.	The architect must issue a progress certificate to the contractor and to the owner within 10 business days of receiving a claim from the contractor.	N5.1	CP-30
5.	On receiving the certificate, the party to be paid (generally the contractor) must then present the certificate along with a tax invoice to the other party for payment.	N6	
6.	The payment must be made within the period shown in item 12 of schedule 1 (default period is 7 calendar days after delivery of the certificate and the tax invoice).	N7.1	
7.	The contractor may submit its final claim on completion of the works and all defects liability periods, and must do so within 20 working days after a request from the architect to do so – failing which the architect may determine the final claim.	N10	CP-49
8.	The architect must promptly (but within 10 working days of receiving the final claim or any requested information) assess the final claim.	N11	
9.	If the contractor fails to provide any additional information requested by the architect to assess the final claim, the architect must promptly assess the final claim on the basis of available information.	N11.3	
10.	The architect must issue the final certificate to the contractor and to the owner within 10 working days of receiving the final claim from the contractor.	N11.1	CP31
11.	On receiving the final certificate, the party to be paid must then present the certificate along with a tax invoice to the other party for payment.	N12	

Section N - Payment for the Works

12. The final payment must be made within the period shown in item 11 of schedule 1 (default period is 7 calendar days) after delivery of the final certificate and the tax invoice.	N13.1
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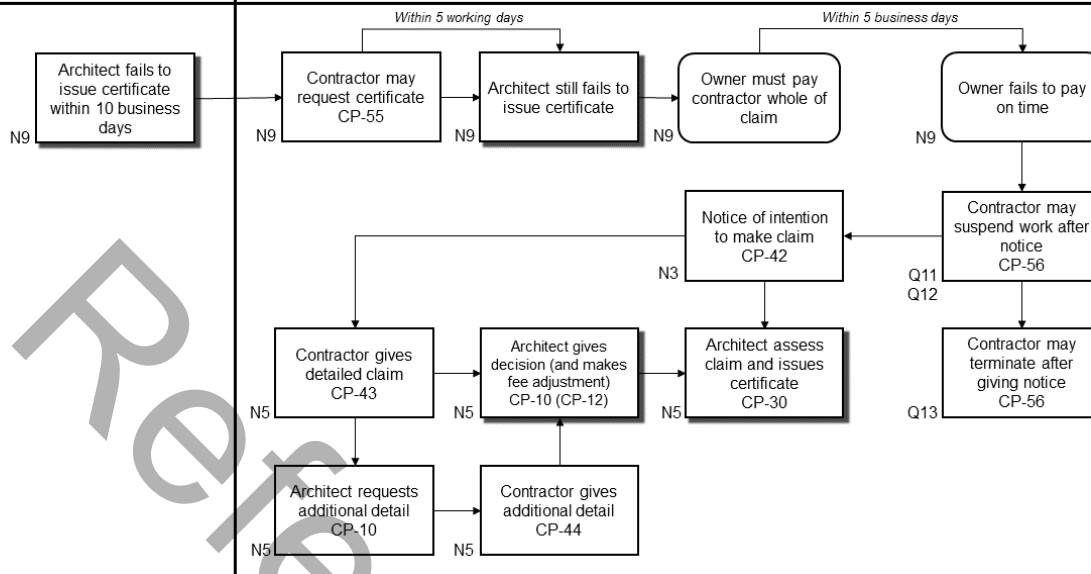


If the architect fails to issue a progress certificate on time (**clause N9**)

No.	Action	Clause	Form
1.	If the certificate is not issued on time the contractor may by written notice, copied to the architect, request the owner to ensure the architect issues the certificate.	N9.1	CP55
2.	If the architect still fails to issue the certificate 5 working days after the contractor's notice is delivered, the contractor is entitled to payment of the full amount of the progress claim within 7 days after the notice was delivered.	N9.2	
3.	If the owner does not pay the full amount by then, the contractor may immediately suspend work.	N9.3, Q12	CP56

Section N - Payment for the Works

Flowchart 10 Failure to issue progress certificate on time



Links

Item 4a of Schedule 1

Item 4b of Schedule 1

Item 25 of Schedule 1

Item 26 of Schedule 1

Clause C1

Section E

Section J

Architects forms

- CP-10 (CP-12)
- CP-30
- CP-31

Contractors forms

- CP-43
- CP-44
- CP-48
- CP-49
- CP-55
- CP-56

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.
- There must be at least two compulsory conferences to attempt to resolve the dispute within ten working days.
- The parties may then agree to use mediation, arbitration or expert determination to resolve the dispute.
- In general, a party can only take legal action after the compulsory conferences.
- A party can take legal action at any time to enforce a payment already due under a certificate or for urgent relief from detrimental action by the other.

Comments

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

Disputes

No.	Action	Clause	Form
1.	Written dispute notice stating what the dispute is, delivered to the other party.	P2.1	CP-57 CP-58
2.	Within 5 working days of the notice, the representatives of the parties have a compulsory conference.	P2.1a	
3.	Within 10 working days of the notice, if there is no resolution to the dispute, there has to be a further conference of representatives of the parties who have authority to settle the dispute.	P2.1b	
4.	Within 15 working days of the dispute notice, if there is no resolution to the dispute, a party may suggest in writing that a mediation, arbitration or expert determination occur.	P3.2a	
5.	Within 20 working days of the dispute notice, the parties have to agree in writing on the form of dispute resolution, or none will be enabled under the contract.	P3.2b	
6.	Within 25 working days of the dispute notice, the parties have to agree on the mediator, expert or arbitrator, or no dispute resolution by mediation, expert determination or arbitration will be enabled under the contract.	P3.2c	
7.	Within 35 working days of the notice, or a different period by written agreement of the parties, a mediation must commence, or no mediation will be enabled under the contract, OR Within 35 working days of the notice, or a different period by written agreement of the parties, an expert must issue a written decision, or no expert determination will be enabled under the contract, OR The conduct of the arbitration including the time by which the arbitrator must issue a decision will be determined by the arbitrator and/or the rules of arbitrations in the relevant state or territory.	P4.3 P5.2 P6.2	
8.	The decision of a mediator, expert or arbitrator cannot be reviewed under the contract. A party must take legal action to review the decision.	P4.4, P5.4, P6.3	

In general, a party may only take legal action either after the compulsory conference or if the parties have pursued one of the 3 dispute resolution alternatives, following the decision of the mediator, expert or

Section P - Dispute Resolution

arbitrator. If a dispute has to be resolved urgently or relates to payment already due under a certificate, a party can take legal action at any time (**clause P7**).

Contractor's forms

CP-57 Contractor's notice of dispute.

CP-58 Contractor's notice of dispute – **clause P2**.

Reference Copy

Section Q - Termination of engagement

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, in the case of the contractor, does or cannot show cause why it cannot rectify the breach. A failure by the owner to pay a progress payment on time is a breach of a substantial obligation.
- In some cases, the contract can be 'frustrated'. Frustration is a legal term and a party should get legal advice before claiming that the contract is frustrated.

Comments

If insolvent, the insolvent party's engagement can be terminated immediately by written notice from the other party.

Before a party's engagement is terminated for breach of a substantial obligation, a party needs to identify the substantial obligation of the other party that has been breached under the contract. Whether or not an obligation is substantial will depend on the particular circumstances, and for that reason it is always recommended that a party get legal advice before the termination process is initiated. However, a failure by the owner to pay a progress payment on time entitles the contractor to begin the same process as a breach of a substantial obligation (**clause Q11.1**).

If the party's engagement is to be terminated, or the contract is frustrated, the following procedures apply:

Termination by the owner (clauses Q1 to Q10)

No.	Action	Clause	Form
1.	If the contractor fails to meet a substantial obligation under the contract, the owner may give written notice to the contractor. The notice must: <ul style="list-style-type: none">• specify the breach• require the contractor to remedy the breach or show reasonable cause why it cannot be remedied within 10 working days and• state that it is given under clause Q1.	Q1	CP-10
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, or such additional days as agreed, the owner may give the contractor a written notice of termination stating that the notice is given under clause Q1 .	Q1	See Note at end of table
3.	The owner may immediately terminate the engagement of the contractor if the contractor becomes insolvent. The different types of <i>*insolvency event</i> that give the owner a right to terminate immediately under clause Q2 , are set out in the definitions in section S . The owner must give the contractor a written notice stating that it is given under clause Q2 .	Q2	See Note at end of table
4.	If the owner terminates the contract under clause Q1 or Q2 : <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, plant, tools and unused materials and equipment and use them in completing the works until the payment certificate is issued under clause Q9• the risk passes to the owner who must take out insurance.	Q3	

Section Q - Termination of engagement

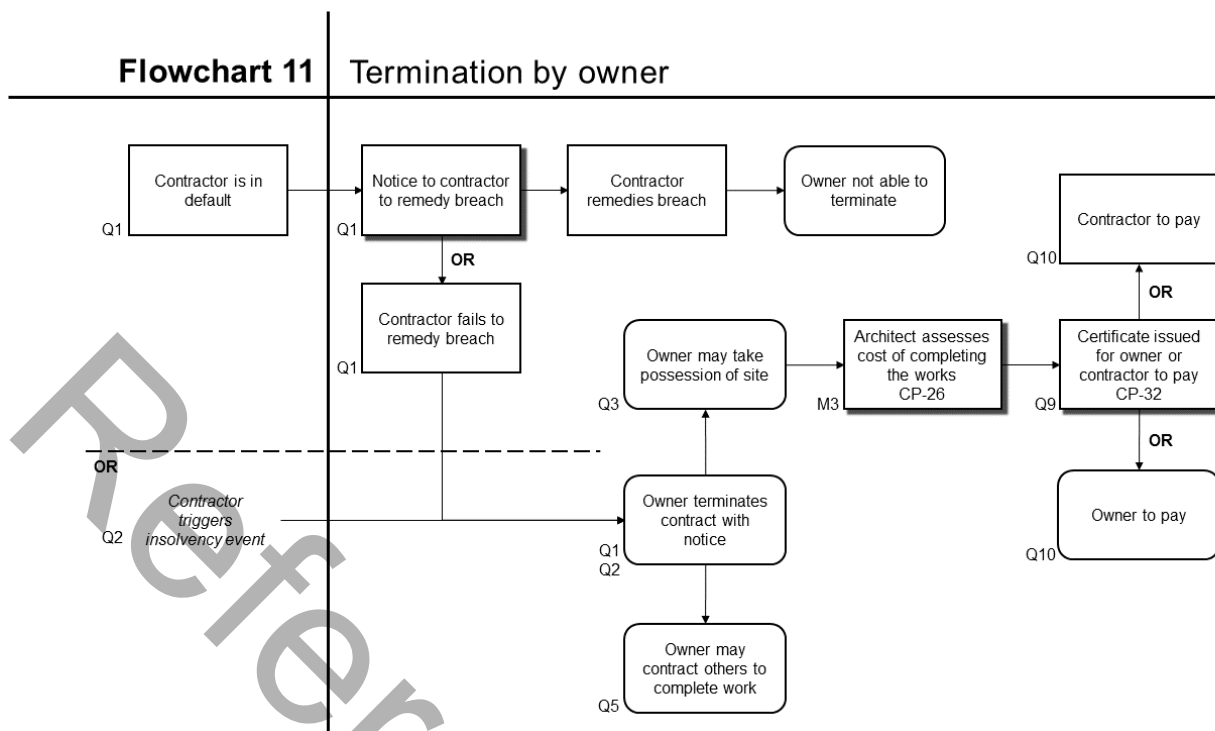
No.	Action	Clause	Form
5.	After termination under clause Q1 or Q2 : <ul style="list-style-type: none"> the architect can instruct the contractor to remove its property from the site the contractor must comply within 10 working days or the owner can remove and dispose of the property if the owner disposes of the contractor's property, it must give the contractor written notice of the amount received and pay this to the contractor, less disposal costs. 	Q3	CP-10
6.	After termination under clause Q1 or Q2 : <ul style="list-style-type: none"> the contractor must assign its rights under any subcontract if required to do so by the architect the owner may contract with others to complete the works the only obligation on the owner to make payment is under clause Q9 the owner may pay any amounts due to subcontractors or suppliers and subtract this amount from the payment certificate under clause Q9 the architect must promptly make a written assessment of the cost to the owner of completing the works, excluding any amount it has paid to the contractor's subcontractors or suppliers and give a copy to the owner and the contractor. <p>Then the architect must promptly prepare the certificate under clause Q9 for the amount payable (if any) to the contractor or the owner and give it to the owner and the contractor.</p>	Q4 Q5 Q6 Q7 Q8 Q9	 CP-26 CP-32
7.	The party to be paid must prepare a tax invoice for the amount in the certificate and give it to the other party for payment.	Q10	
8.	The certificate takes the place of a final certificate under clause N11 and any security must be released.	Q9, C9	
9.	The amount must be paid within the period shown in item 12 of schedule 1 .	Q10	

Note – Owner (**clause Q1** and **Q2**) and Contractor (**clause Q13** or **Q14**):

If the owner decides to terminate the contract in accordance with **clause Q1** or **Q2**, or the contractor in accordance with **clause Q13** or **Q14**, that party should get legal advice on drafting an effective notice of termination.

Section Q - Termination of engagement

Flowchart 11 Termination by owner



Termination by the contractor (clauses Q11 to Q18)

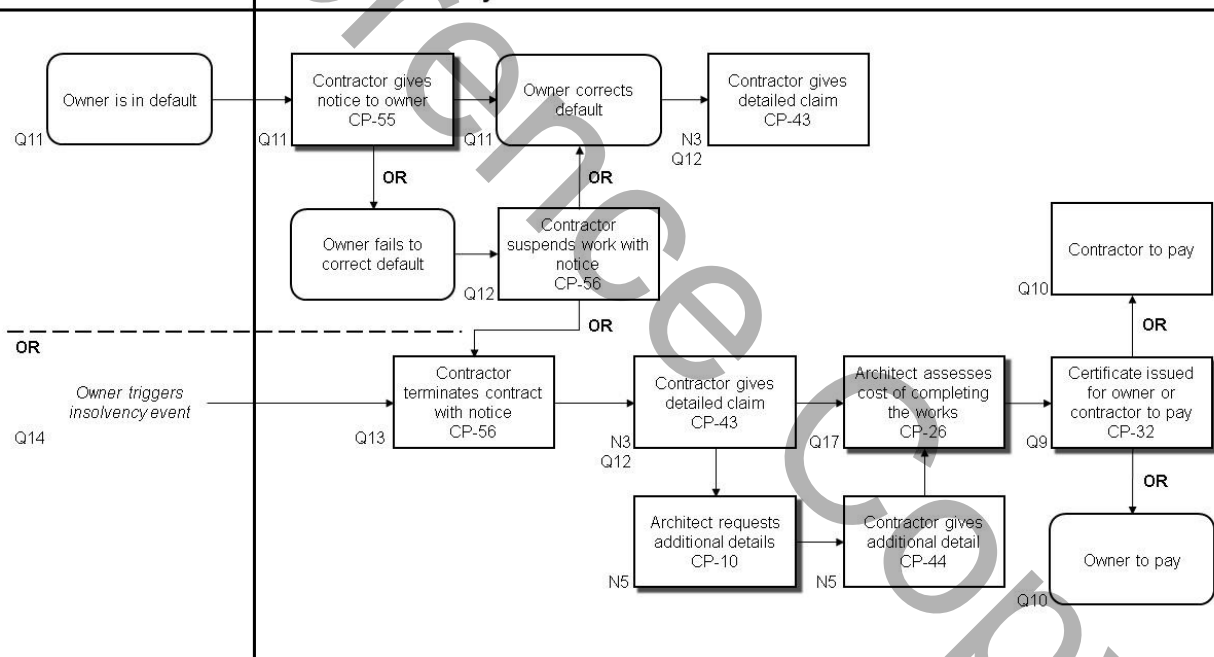
No.	Action	Clause	Form
1.	If the owner fails to make a progress payment on time or fails to meet a substantial obligation under the contract, the contractor may give written notice to the owner and the architect. The notice must: <ul style="list-style-type: none"> specify the breach require the owner to remedy the breach within 10 working days state that the notice is given under clause Q11 and state that if the default is not remedied within 10 working days, the contractor will be entitled to suspend the works. 	Q11	CP-55
2.	If: <ul style="list-style-type: none"> the default is not remedied or the owner fails to show reasonable cause why it cannot be remedied within time or if the owner fails to pay the full amount of a progress claim under clause N9.3 the contractor may suspend the works by giving written notice stating that the works are suspended under clause Q12 .	Q12	CP-56
3.	Once a notice of suspension has been given under clause Q12 the contractor may terminate the contract by written notice to the owner and the architect stating that the contract is terminated under clause Q13 .	Q13	CP-56
4.	The contractor may immediately terminate the contract if the owner becomes insolvent. The contractor gives a written notice stating that it is given under clause Q14 .	Q14	CP-56
5.	If the contractor terminates under clause Q13 or Q14 the owner must pay the contractor as if it had wrongfully repudiated the contract.	Q15	
6.	The contractor must submit a claim within a reasonable time to the owner for the amount in clause Q15 .	Q16	CP-43

Section Q - Termination of engagement

No.	Action	Clause Form
7.	The architect must promptly assess the claim and promptly issue a payment certificate.	Q17
8.	The payment certificate takes the place of a final certificate and security must be released under clause C9 .	Q17, C9
9.	The party to be paid must prepare a tax invoice for the amount in the certificate and give it to the other party for payment.	Q18
10.	The amount must be paid within the period shown in item 11 of schedule 1 .	Q18
11.	If, after suspension of the works: <ul style="list-style-type: none"> the owner rectifies the default and the contractor has suffered any loss, expense or damage as a result of the suspension of works, the contractor can make a time/cost claim.	Q12, N

A cost claim under **section Q12** is made by following the procedures and requirements in **section N**.

Flowchart 12 Termination by contractor



Frustration (clause Q19)

Before a party decides to assert that the contract is frustrated, it should obtain legal advice.

Frustration generally means that the parties can no longer do what they agreed to do under the contract because of some outside event that they could not have foreseen when they entered into the contract.

Frustration can exist at law or under this contract, because the parties agree the contract is frustrated. If the contract is frustrated for either reason, the contractor can make a claim for: work performed and not paid for, security held by the owner, non-recoverable costs, and loss of profit.

The architect must promptly assess the claim for payment and issue a final payment certificate which will take the place of a certificate under **clause N12**.

Security must then be released in accordance with **clause C9** and payment must be made within the time shown in **item 12 of schedule 1**.

Section Q - Termination of engagement

Architect's forms

- **CP-10** Architect's instruction.
- **CP-26** Notice – assessment of cost of completing the work.
- **CP-32** Certificate – termination payment.

Contractor's forms

- **CP-43** Details of claim.
- **CP-55** Contractor's notice.
- **CP-56** Notice of suspension/termination.

Reference Copy

Sections R and S

Comments

Both **sections R** and **S** assist in the interpretation of the contract. In **section R**, there are a number of clauses assisting in interpretation of the contract, including setting out how and when documents are delivered by one party to the other and to the architect.

Section S contains definitions of a number of terms used in the contract. Defined terms are shown in the contract with a star and in italics, for example: **works*. If you see a word with a star and in italics, or are 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).

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.

For example, if a party has 5 working days to send a notice and it sends the notice by post, the notice has to be sent within 2 working days (to allow the remaining 3 working days for postage). If a party sends the notice by email, and does not receive a reply from the recipient, or a notice by return confirming delivery or a 'read' notice from the recipient's email system, the notice is deemed to have been delivered on the next working day. However, if the notice is sent by email after 5.00pm (in the time zone of the site) on a working day, the message is also deemed to have been delivered on the next working day, even if a reply, or notice confirming delivery or that it has been read is received on the day it was sent. If the notice is sent by email but not on a working day, it is deemed to have been served on the next working day, again whether or not a reply or a delivery or read notice is received.

Change in relevant legislation

Clause R10 provides that if, after the parties have executed the contract, any relevant legislation changes or new legislation comes into effect that requires changes to the works, the contractor has to notify the architect promptly. The architect has to promptly instruct the contractor what to do. This may involve time and/or cost adjustments.

The forms referred to in the user guide are listed below. Electronic copies are available for purchase and download separately to the user guide and the contract.

Architect's forms

Form	Title
<i>Instructions</i>	
CP-10	Architect's instruction
CP-11	Architect's Instruction for a change to the works
CP-12	Contractor's Fee Adjustment
CP-13	Instruction – to proceed/not proceed with a change to the works
CP-14	Instruction – to use person for provisional or prime cost sum
CP-15	Instruction – to provide quotation for provisional or prime cost sum
CP-16	Adjustment of estimated date of practical completion
CP-17	Instruction – to correct defects or finalise work
CP-18	Instruction – request for contractor to submit final claim
<i>Notices</i>	
CP-20	Notice of practical completion
CP-21	Security - Notice to give additional security
CP-22	Architect's Report on Progress
CP-23	Notice of insurance
CP-24	Notice – the works not at, but near, practical completion
CP-25	Notice – the works not at and not near practical completion
CP-26	Notice – assessment of cost of completing the works
<i>Certificates</i>	
CP-30	Progress payment certificate
CP-31	Final certificate
CP-32	Certificate – termination payment
CP-33	Certificate – release of contractor's security

Contractor's forms

Form	Title
CP-40	Request for information/instruction/notice
CP-41A	Notice of contract price estimate
CP-41B	Notice of new contract price estimate
CP-42	Notice of intention to claim
CP-43	Details of claim

Forms

Form	Title
CP-44	Additional information
CP-45	Evidence of insurances – contractor to insure
CP-46A	Security – providing unconditional guarantees
CP-46B	Security – notice of the top-up costs
CP-47	Notice to architect – works at practical completion
CP-48	Progress claim – summary sheet
CP-49	Final claim – summary sheet – clause N11
CP-50	Change in the form of security to the owner
CP-51	Evidence of insurances – owner to insure
CP-54	Separate contractor – objection to engagement as a subcontractor
CP-55	Contractor's notice
CP-56	Notice of suspension/termination
CP-57	Notice of dispute
CP-58	Notice of dispute – clause P2
CP-59	Notification of an official document
CP-60A	Notice of start of delay
CP-60B	Notice of end of delay