

SIMPLE WORKS CONTRACT

AUSTRALIAN
BUILDING
INDUSTRY
CONTRACT



Australian
Institute of
Architects



MASTER BUILDERS
AUSTRALIA

ABIC SW 2018

Simple Works Contract

User Guide

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ABIC SW 2018

SW 2018 Simple Works Contract User Guide

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

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

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

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

Why use an ABIC contract?

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

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

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

This user guide does not cover the variations in the housing 'H' versions of the SW contract but does examine the mechanism for paying and assessing a deposit under the 'H' contracts. There are also separate user guides for the MW and BW contracts.

How to use this User Guide

This user guide:

- covers each section of the contract outlining the processes for dealing with particular issues. As much as possible, these processes reflect the typical building sequence in which the issues are faced by the parties.
- provides relevant commentary on each section, and supplements it with charts and tables that summarise processes required by the contract. The charts identify the relevant clause numbers and forms to be used. There is a list of all template forms at the end of the guide.

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

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

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Contract versions

Differences between SW and other suite contracts

The SW contract is intended for simpler projects in the ABIC suite of building contracts. Compared to the MW contract the most comprehensive contract in the ABIC suite of building contracts, it does not provide for the following additional issues:

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

When to use SW?

There is no specified project type, value or threshold that applies to either contract form. Whether to use the MW or the SW contract depends on the circumstances and the complexity of your project, which determines whether you need the additional provisions listed above.

Improvements from SW 2008 to 2018

The SW 2018 has both new and improved provisions over the 2008 issue. The 2008 issue contracts can still be used and administered, however the ABIC authors recommend all new projects use the 2018 revised issue.

New Provisions in SW 2018:

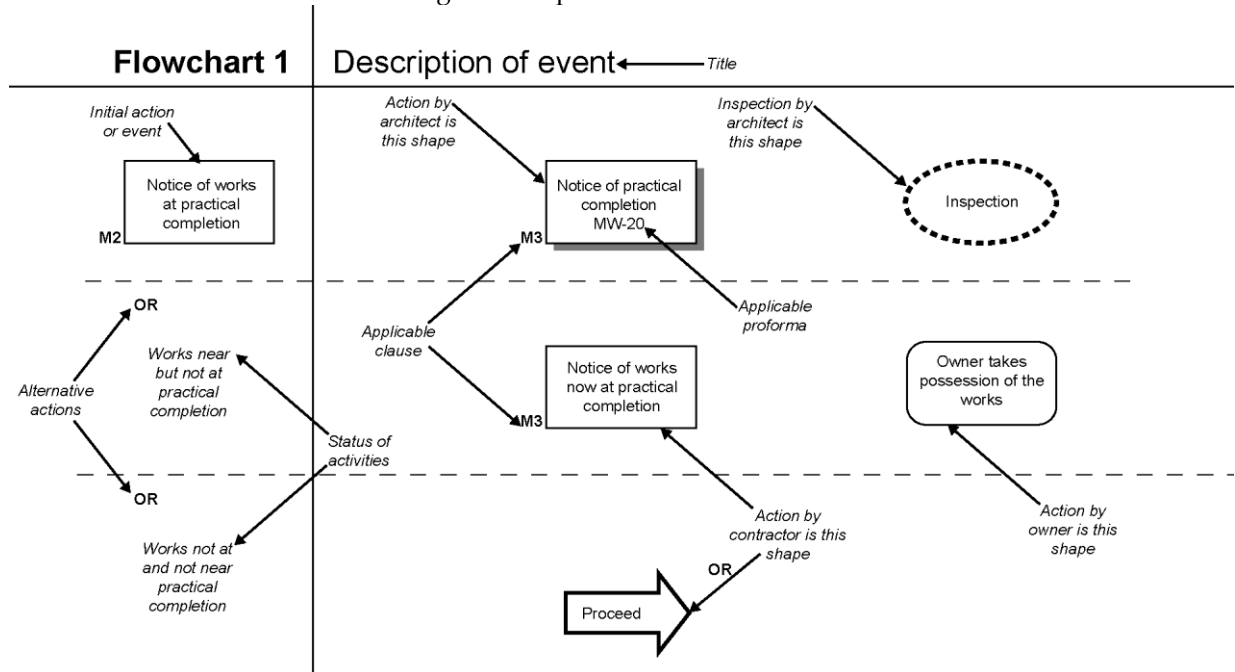
- Owner-supplied materials
- Unfixed and demolished materials
- Conditions on access to site
- Deposits (housing-version only)

Improved provisions in SW 2018:

- Schedule 1: Contract Details
- Schedule 5: Form of Guarantee
- Public Liability and Contract Works insurance requirements
- Cash retention and trust accounts
- Defects Liability Period
- Disputing architect's failure to act

Flowcharts

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



Time limits in the contract

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

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

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

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

Promptly means as soon as practicable.

Critical times

Clause	Event	Architect 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 alteration to financial position	Immediately	
A5.3	Advise change of GST status or ABN	Promptly	
A8.1	Dispute architect's certificate, written decision	Within 20 working days after receiving certificate, notice or decision/assessment	Within 20 working days after receiving certificate, notice or decision/assessment
A8.3	Assess party's dispute notice under clause A8.1 and give written decision	10 working days	
A9.1	Dispute architect's failure to act	Promptly after becoming aware of failure	Promptly after becoming aware of failure
A9.2	Assess party's dispute notice under clause A9.1 and give written decision	10 working days	
B1.1	Notify architect in writing of discrepancy in documents	Promptly	Promptly
B1.1	Issue instruction to resolve discrepancy in the documents	Promptly	
B3.1	Supply copies of official documents	Promptly	Promptly
C3.1	Give unconditional guarantees as security		Within 10 working days after execution of the contract
C6.3	Release 50% of security	Within the time shown in item 10 of schedule 1 after issue of notice of practical completion	
C7.3a	Release of remaining security	Within the time shown in item 10 of schedule 1 after issue of final certificate	
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 the day the final certificate is issued	From possession of the site until 4:00pm on the day the final certificate is issued

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
E3.1	Advise insurer of entitlement to input tax credit	Within 20 working days after insurance being taken out	Within 20 working days after 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	Notify architect of insurance claim and give additional information	Promptly	Promptly
F1.1	Give possession of the site	Within 10 working days after receiving copy of the signed contract, any official document to begin works to be obtained by the contract and being satisfied that the insurances are in place	
F3.1	Give all relevant site information	At least 5 working days before the close of tenders	
F5.1	Notify and seek instructions due to latent condition/valuable item		Within 5 working days after discovery
F6.1	Give instruction regarding latent condition/valuable item	Promptly after receipt of notice	
G5.1	Give program to architect		Within 10 working days after possession of site
H1.1a	Notify architect of intention to make time/cost claim		Promptly after receiving instruction or on becoming aware of event
H1.1b	Submit detailed claim		Within the time agreed, or within 20 working days after receiving instruction or becoming aware of event
H3.1	Assess the time/cost claim	Promptly	
H3.3	Give additional information		Promptly
H4.1	Issue written decision	Within 20 working days after receipt of claim	
J1.1	Give written instruction for variation	Any time before date of practical completion	
J2.2c	Carry out instruction for variation if no time/cost implications		Promptly
J2.3c and J2.4	Notify architect of time/cost implications of variation		Promptly unless instruction received under clause J1.2 in which case within 20 working days
J3.1	Instruct whether variation is to proceed or request further information	Within 5 working days	
J4.1	Proceed with variation		Promptly
J4.2d	Submit detailed time/cost claim		Within 20 working days after completion of variation work
J6.1	Notify architect of official notice		Promptly
J7.1	Give written instruction regarding official notice	Promptly	
L3.1	Notify delay to works		Within 2 working days after becoming aware of delay
L3.1b	Notify end of delay to works		Within 2 working days after becoming aware of end of delay

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
M1.1	Bring works to practical completion		By the date shown in item 22 of schedule 1
M1.2	Owner takes possession of the works	4:00pm on the date the notice of practical completion is issued.	
M2.1	Notify works near practical completion and give timetable for correction of defects		10 working days before expected date of practical completion as adjusted
M3.1	Notify architect that works at practical completion		When works are at practical completion
M3.2	Begin inspection of the works	Promptly	
M3.2	Complete inspection	As agreed or 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
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 practical completion	Within 5 working days after completing inspection	
M6.1	Bring works to practical completion after architect's statement under M5		Promptly
M7.2	Issue notice of practical completion on request from contractor	Within 5 working days after the request	
M8.1	Issue notice of practical completion if owner has taken possession before practical completion	Within 5 working days after written advice that owner has taken possession	
M9.1	Notify of owner's entitlement to liquidated damages	Promptly	
M9.2	Advise architect of enforcement of liquidated damages	Up to 20 working days after date of issue of notice of practical completion	
M10.1	Notify contractor of owner's decision to enforce liquidated damages	Within 1 working day of receiving owner's decision	
M11.1	Correct defects or finalise incomplete work		Within 10 working days after receiving instruction
M14.1	Rectify defects discovered during defects liability period		Promptly until defects rectified and work is finalised
N4	Issue progress payment certificate	Within 10 business days after receipt of claim	
N6.1	Pay progress claim	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice
N8.1	Issue certificate after request from contractor	Within 5 working days after request issued	
N8.2	Pay certificate if architect does not issue certificate after request under N9.1	Within 7 calendar days after request issued	
N8.3	Suspend work if owner does not pay contractor under N9.2		Immediately
N11.1	Assess final claim	Promptly	

Time limits in the contract

Clause	Event	Architect or Owner	Contractor
N11.1	Issue final certificate	Within reasonable time not exceeding 10 business days	
N13.1	Pay final claim	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice
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 as agreed	
Q2.1	Terminate due to insolvency event	Immediately, unless subject to a limitation by provisions of the <i>Corporations Act 2001</i> (Cth)	
Q3.3	Comply with removal of property instruction		Within 10 working days after instruction
Q8.1	Assess cost of completing the works	Promptly after termination	
Q9.1	Issue payment certificate	Promptly after assessment under Q8	
Q10.3	Pay amount owing	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice	Within period shown in item 10 of schedule 1 after delivery of certificate and tax invoice
Q11.1	Owner to remedy default or show cause	10 working days after notice	
Q12	Suspend work due to owner default		Immediately on written notice
Q13	Terminate due to owner default		Immediately on written notice
Q14.1	Terminate due to insolvency event		Immediately on written notice, unless subject to a limitation by provisions of the <i>Corporations Act 2001</i> (Cth)
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

Document Preparation

At least two copies of all contract documents must be prepared to give each party an original, fully executed set of the contract documents. To administer the contract, the architect must have a copy of the contract documents identical to the executed copies, so either 3 copies can be prepared for signing, or one party's executed copy can be copied in entirety for the architect to use.

The parties must fill out the details of the project in **schedule 1** of the contract. **Schedule 1** is available digitally in Word format from Australian Institute of Architects' Acumen online and Master Builders Australia. The owner and the contractor can meet to sign all copies of the contract (and documents) at the same time. This is the best way to ensure that the contract is executed correctly. However, if that is not feasible, each party 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.

Digital Signing

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

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

Item 1 – Key details and Signing

The owner and the contractor sign the contract at **item 1**. 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. We recommend that each party initial each page of the contract, at the bottom in the space provided (including each page of the specifications and each page of drawings).

Note that it is not recommended that the parties make changes to the contract, or special conditions (other than those supplied with the contract – see **item 3**), or agree to them without legal advice. Alterations to the contract may be handwritten, but changes made on the printed form are not recommended. We recommend the parties prefer to insert changes as special conditions in **schedule 2a**. The parties must initial all handwritten changes to the contract or the specification or the drawings. If there are special conditions in **schedule 2a**, the page must be initialled by each party.

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

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

Item 2 – The architect

The architect must give address and contact details, Board registration number and identify its representative who will administer the contract.

Item 3 – Special conditions

In **item 3**, the parties need to say whether there are any special conditions. Where there are special conditions, the 'No' option must be struck out and the special conditions must be set out in **schedule 2a**. If there are no special conditions, we recommend you write "None" in **schedule 2a**.

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

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

The contract price must show the cost of building work and the GST amount.

Items 5 and 6 – The works and the site

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

Items 7 to 10 – Security (**section C**)

If the owner requires the contractor to provide it with security, and nominate the type and amount of security required from the contractor, it should request so at tender time. This is because the type and amount of security changes risk allocation and may affect the contract price. Both can be negotiated before the contract is executed.

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 7a: whether the owner requires security from the contractor.

Item 7b: 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.

In **item 8**, the default is for the cash retention to be 5% of the contract price, as varied during construction (**clause C2.1**).

In **item 9**: the default for the contractor's security is the two (2) equal unconditional guarantees, both being 2.5% of the value of the contract price, as varied during construction (**clause C3.1**)

Item 10 – 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 should take into account the requirements of the owner's lending institution if it has particular requirements for making funds available under the lending facility. Because the time the contractor must wait for payment may affect the contract price, in such situations, the architect will often consult the owner so that the period for payment is known at tender.

Item 11 – Public liability insurance (**clause E1**)

The contract allows either party to take out and maintain public liability insurance for the project. The more common practice is that the contractor does so and this is the default option.

Item 12 – Contract works insurance (**clause E2**)

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

Item 13 – Amount to cover fees of the architect and other consultants (**clause E4.1**)

This item recognises that additional consultant fees may need to be paid 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 when deciding on the percentage.

Item 14 – 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 paid 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, when deciding on the percentage.

Item 15 – Amount of insurance for injury, illness, disease or death (**clause E4.2**)

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

Schedule 1 – Contract information

Item 16 – Insurance excess (**clause E9**)

This item defines the insurance excess that is payable by a party for both public liability and contract works insurance.

Item 17 – Percentage for contractor’s overheads and profits (**clause H2**)

The contractor is entitled to the extra cost of any relevant preliminaries whenever the contract is varied resulting in a change to the contract price. The contractor is also entitled to an allowance for overheads and profit calculated as a percentage of the value of a variation which increases the contract price. This percentage will be reflected in the tender or can be negotiated with the contractor before the contract is executed.

Item 18 – Adjustment of time costs (**clause H5**)

This item provides for adjustment of time costs to be agreed in advance for the various stages of the project. If no rates are shown, a contractor’s claim for delay will have to be assessed during the contract based on actual evidence of cost caused by the particular delay. It is common to avoid the administrative burden, and potential for dispute of the architect’s assessment, by establishing rates in advance which correspond to stages of completion. The rates per day should make reasonable allowance for the costs relevant to that stage associated with the contractor being on site (preliminaries) including but not limited to site establishment and labour costs, craneage, etc. The rates may be nominated by the contractor as part of its tender submissions and can be negotiated, before the contract is executed.

Item 19 – Percentage of difference to be added to contract price (**clause K4.2**)

If the cost of work associated with a provisional or prime cost sum exceeds the sum allowed in the contract, the excess is increased by the percentage included in this item. This percentage is intended to make an appropriate allowance for the additional contractor’s preliminaries, overheads and profit over and above the allowance for these the contractor made when the contract was executed. The default rate is 10%. Before the contract is executed, this item can be negotiated.

Item 20 – Allowance for delay for disruptive weather conditions (**clauses L2 and L4**)

In this item, the contractor must give or agree to an estimate of the likely delay that can be expected due to weather conditions that disrupt building activity, having regard to the nature of the works, the location of the works and the time of the year when the works are to be constructed. This is a pre-estimate of delay for disruptive weather which applies to claims for delay costs in accordance with **clauses L2 and L4** and can be negotiated before the contract is executed.

Item 21 – Other allowances for delay having regard to the contract works that do not entitle adjustment of time costs (**clauses L2 and L4**)

In this item, insert identifiable causes of delay:

- where it is possible to predict that the works will, or might be, delayed due to those causes and
- which will not entitle the contractor to claim the costs of the delay.

Insert the pre-estimate of the length of the delay to be allowed for each of those causes. If known, these should be nominated at tender, but can be negotiated before the contract is executed.

Item 22 – Date for practical completion (**clause 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 20 and 21 of schedule 1** and can be negotiated before the contract is executed.

Item 23 – Commissioning tests for practical completion (**clause M1**)

This item allows the architect and other consultants to nominate any specific commissioning tests that must

be satisfactorily completed before the works will be considered to have reached practical completion. These tests may include tests of plant and equipment, such as air conditioning, lifts or heating systems.

Item 24 – Rate for liquidated damages (clause M9)

The amount stated in this item should represent a reasonable estimate of the actual losses that the owner would suffer if the project is not completed by the adjusted date for practical completion. Because the rate may affect the contract price, it should be nominated when tender documents are prepared, and can be negotiated before the contract is executed. GST does not apply to this amount, even if the estimated losses include GST.

Item 25 – Defects liability period (clause M13)

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. The length of the period may affect the contract price, so 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 can be negotiated.

Item 26 – Date for submitting progress claims (clause N3)

The default date is the 15th day of the month. The architect should nominate the most appropriate date for the project in the tender documents, but it can be negotiated before the contract is executed.

Item 27 – Information to be included in the progress claim (clause N3)

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. Because 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 can be negotiated.

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 at this item. Because the rate may affect the contract price, it is preferable to nominate the rate at the time of tender, but it can be negotiated before the contract is executed. The default is 10%.

Item 29 – Governing law

The default provision is the law of the state or territory where the site is located. However, this should not be altered lightly and we recommend the parties get legal advice because choosing a governing law can have unintentional consequences on the contract and the rights of the parties.

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. A requirement to obtain, or not obtain, a particular official document may affect the contract price, so 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 can be negotiated before execution of the contract.

Schedule 1 – Contract information

Domestic contracts, H version only:

Item 30 – Deposit by owner (clause N16)

If the parties have agreed that a deposit is to be paid by the owner, the parties should strike out 'No' in **item 30a (or equivalent)**. If so, the dollar amount of the deposit (including GST) should be written into **item 30b (or equivalent)**. If no amount is written in, no deposit will be payable. Note that the deposit amount payable is capped by the applicable domestic or residential building legislation in almost all states and territories and penalties apply if the deposit paid or requested is greater than those prescribed limits. Refer to table below.

State	Restrictions/Limits on Deposits under domestic building legislation
ACT	There is no limitation, prescribed under ACT legislation, as to the percentage of the contract price that may be payable as a deposit. This may be negotiated between the parties.
NSW	<i>Home Building Act 1989 – section 8</i> The deposit amount must not be more than 10% of the contract price.
NT	<i>Building Regulations – regulations 41E and 41HE</i> If the contract price is more than \$12,000: the deposit amount must not be more than 5% of the contract price.
QLD	<i>Queensland Building and Construction Commission Act 1991 – schedule 1B section 33</i> If the contract price is \$20,000 or more: the deposit amount must not be more than 5% of the contract price. If the contract price is more than \$3,300 but less than \$20,000: the deposit amount must not be more than 10% of the contract price. If the value of off-site work is more than 50% of the contract price: the deposit amount must not be more than 20% of the contract price.
SA	<i>Building Work Contractors Regulations 2011 – regulation 17(d)</i> If the price is less than \$20,000: a deposit of not more than \$1,000. If the price is \$20,000 or more: a deposit of not more than 5% of the price.
TAS	<i>Residential and Building Work Contracts and Dispute Resolution Act 2016 – Director's Determination – Mandatory Contract Provisions</i> If the contract price is between \$20,000 and \$50,000: a deposit of not more than 10%. If the contract price is \$50,000 or more: a deposit of not more than 5%. If the value of the work to be performed off-site is more than 50% of contract price: a deposit of not more than 20%.
VIC	<i>Domestic Building Contracts Act 1995 – section 11</i> If the contract price is less than \$20,000: a deposit of not more than 10% of contract price. If the contract price is \$20,000 or more, a deposit of not more than 5% of contract price.
WA	<i>Home Building Contracts Act 1991 – section 10(1)</i> Deposit must not be more than 6.5% of the total amount payable.

Note: All numbers and references are current as at date of printing.

Specific versions of the MW 2018 contract are available for housing projects in each state and territory and must be used where the domestic building legislation applies.

Special conditions – Schedule 2

Schedule 2 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 that form the printed contract.

As noted in the **Introduction** to this guide, where it is necessary to amend the general conditions, it is better practice to write special conditions into **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**. If there are no special conditions, we recommend you write “None” 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.

If the owner is to remain in occupation, the standard special conditions must be invoked by striking out ‘No’ in **item 3** of **schedule 1**. This has the effect of ‘automatically’ inserting the clauses and making those changes set out in **schedule 2b**. Whichever options are selected, each party must sign where shown in **item 3** and we recommend the parties initial each schedule page that is customised or added.

Schedule 3 – Order of precedence of contract documents

This schedule allows the parties to amend the standard order of precedence between contract document categories set out in **clause B2**, and to specify in more detail which documents in the contract take precedence in each of the contract document categories listed in **clause B2**.

However, the standard order of precedence of the contract document categories should not be altered lightly, and the parties should get 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. The following order is considered appropriate for most projects:

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 drawing.

Schedule 4 – Site information

This section provides for the insertion of site information relevant to the particular project.

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.

Site information includes any reports, surveys, test results, plans, specifications, computations or other information such as foundation data, soil tests or geotechnical tests.

Form of guarantee – Schedule 5

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**. Financial institutions may have their own form of guarantee, but **schedule 5** provides a form for contractor unconditional guarantees that meet the requirements of the contract, if these types of security are nominated in **item 7** of **schedule 1**.

The contract requires the guarantee to be from a recognised financial institution and be in a form approved by the owner. If a party is proposing to use a different form of guarantee, it must incorporate the same key terms and effects as those contained in the standard forms or it needs to be approved by the party receiving the unconditional guarantee.

Provisional sums – Schedule 6

Schedule 6 provides, in accordance with **clause K1**, for details of all provisional sums, including the sum allowed, a description of the work covered by each sum, and (if applicable) the intention to use a particular person to carry out the work.

The architect should complete this item for issue with the tender documents, but they can be negotiated before the contract is executed.

The owner may intend to use a particular person other than the contractor or contractor's subcontractor in accordance with **clause K3**. If so, this must be indicated in this schedule at execution of the contract, and 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 must still be indicated by inserting 'Yes' in the column headed 'Particular person'.

Prime cost sums – Schedule 7

Schedule 7 provides, in accordance with **clause K1**, for details to be recorded of all prime cost sums including the sum allowed, a description of the item(s) covered by each sum, and (if applicable) the intention to use a particular person to supply or supply and install each item.

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 inserted in this schedule at execution of the contract, and 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'.

Items to be supplied by the owner for incorporation into the works – Schedule 8

Depending on the project, the owner may wish to supply certain items that are to be incorporated in the works. If so, **clause A5.5** now clarifies that the owner gives a warranty that those owner-supplied materials comply with applicable building codes and regulations. However, the contractor should still consider whether all materials being supplied are compliant and suitable for the intended use (see page 16 below). **Clauses A5.5** and **A5.6** are new to Simple Works.

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

Template forms

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

Section A – Overview

Key points

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

Guidance

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

Clauses A2 and **A5** set out the specific obligations and warranties given by the contractor and the owner. **Clauses A5.5** and **clause A5.6** are new to ABIC 2018 Simple Works. **Clause A5.5** has the effect that all materials to be supplied by the owner, come with the owner's warranty that they comply with the building code applicable to the project. **Clause A5.6** modifies this warranty from the owner and, depending on the contractor's actions, the owner's initial warranty will not apply if the conditions in **clause A5.6a** or **b** apply. The parties continue to rely on the contractor's expertise to be aware whether or not certain materials comply or will not comply.

A party can dispute an act by the architect under **clause A8**. **Clause A8** now only applies to an architect's certificate or a decision made or notice sent. To dispute an act (**clause A8**), the party must give the architect written notice of the dispute within 20 working days after the date of the decision. Separately, the procedure in **clause A9** applies where the architect does not act or fails to issue a notice or decision. The architect must assess the party's written notice and give a written decision within a further 10 working days. If a party wishes to dispute a decision made under **clause A8** or **A9**, 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. This does not apply to notices under **clause A9** claiming that the architect failed to act.

Under **clause A11**, compensation awarded to a party as determined according to the terms of the contract is its sole compensation under the contract.

Architect's forms

SW-10 Architect's instruction

Contractor's forms

SW-57A Notice of dispute (acts done)

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

SW-61 Notice of non-compliance

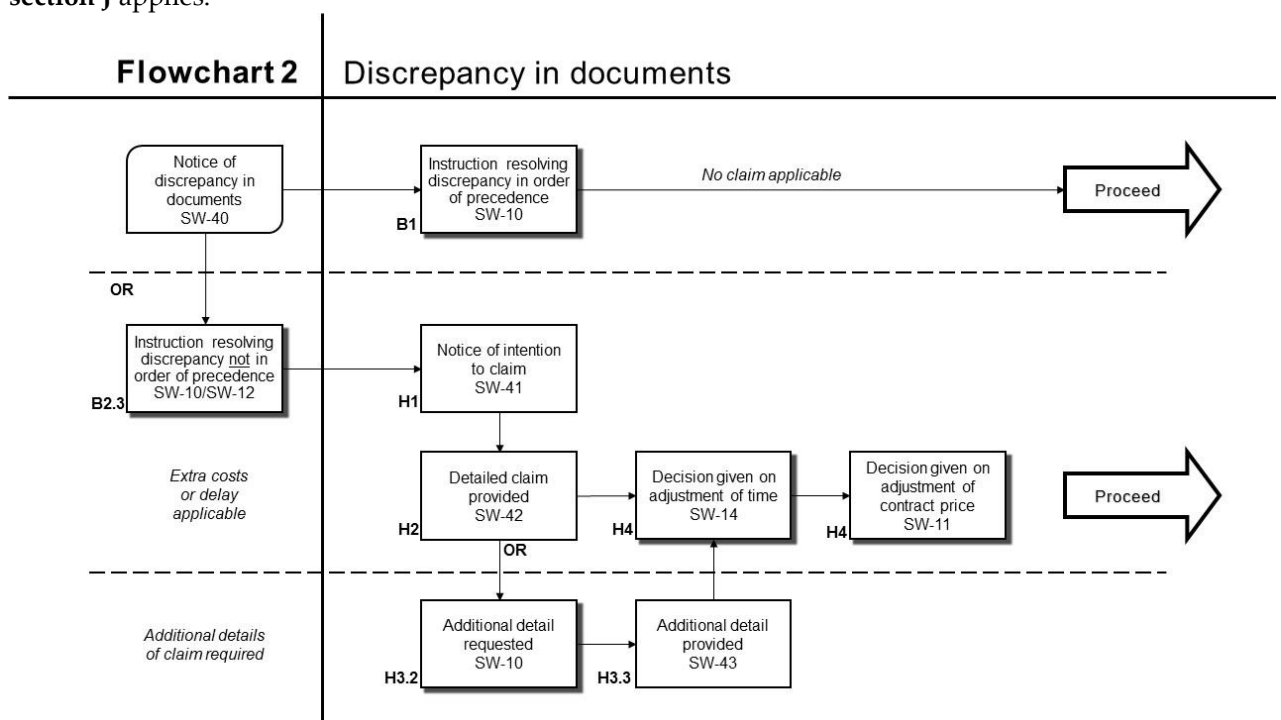
Key points

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

Guidance

Clause B1 sets out the requirement for the owner or the contractor to notify the architect promptly if they discover a discrepancy, ambiguity or omission in the contract documents. Once notified, the architect must issue promptly an instruction to the contractor having regard to the order of precedence of documents set out in **schedule 3** of the contract.

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



Links

Schedule 3 (order of precedence of documents).

Section H (procedures for making and assessing claims to adjust the contract).

Section J (instructions for variations).

Clauses J6 to J8 (variations arising as a result of official documents).

Architect's forms

- SW-10** Architect's instruction
- SW-11** Instruction – contract price adjustment
- SW-12** Instruction – for a variation
- SW-14** Instruction – adjustment of time

Contractor's forms

- SW-40** Request for information/instruction/notice
- SW-41** Notice of intention to claim
- SW-42** Details of claim
- SW-43** Additional information
- SW-59** Notification of official document

Section C – Security

Key points

- If shown in **item 7a of schedule 1**, the contractor must give the owner security for its obligations under the contract either by unconditional guarantee or by cash retention.
- The owner must release half of the security from the contractor at practical completion and the balance on the issue of the final certificate.
- The contractor must release all of the security from the owner at practical completion.
- The owner can only draw on the other’s security in specified circumstances.

Guidance

Contractor’s security

Clause C1 allows the owner to nominate the type of security from the contractor before the contract is executed, typically at the time that tenders are called. If no alternative is nominated, cash retention applies (see **item 7 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. The amount of security is typically 5% of the contract price but this may be varied before the contract is executed, again typically at the time tenders are called (see **items 8 and 9 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 nominated percentage to the cost of building work in **item 4 of schedule 1**, i.e., without the GST component of the contract price.

Clause C2 sets out the procedure if cash retention is used. **Clause C3** sets it out if unconditional guarantees are selected.

Drawing on security

Clause C4 sets out the conditions under which security can be drawn upon. **Clause C5** sets out the procedure for drawing on the security, which is a precondition to the right to draw on security on the security and must be followed.

Example:

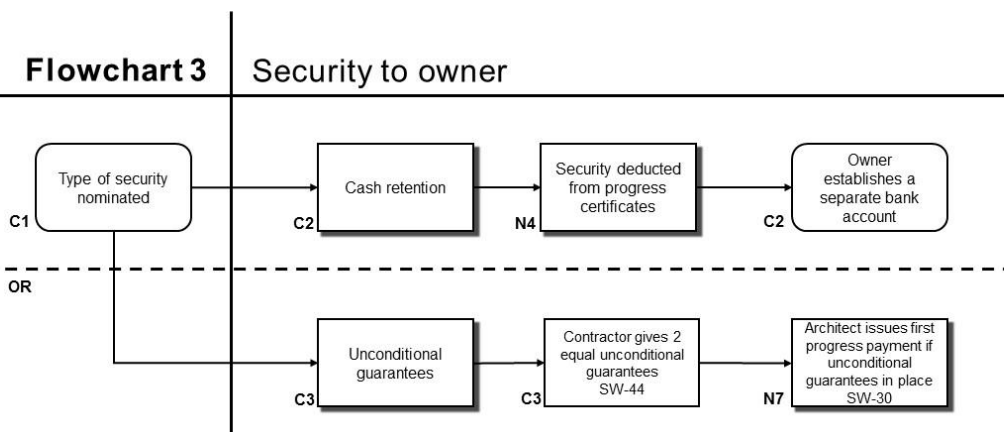
A 5% cash retention is held. At practical completion, the owner will release:

$$50\% \times 5\% = 2.5\% \text{ of the total cash retention held.}$$

Release of security

Clauses C6 and C7 respectively set out the procedure for release of the security to the owner at practical completion and final certificate.

Flowchart 3 Security to owner



Links

Items 7 to 9 of schedule 1 (type of security and percentages).

Section M (practical completion).

Clauses N10 to N13 (final certificate).

Architect's forms

- SW-10** Architect's instruction
- SW-20** Notice of practical completion
- SW-31** Final certificate
- SW-33** Certificate – release of contractor's security

Contractor's forms

- SW-44** Security – providing bank guarantees
- MW-44H** Security –guarantees and deposit (domestic only)
- SW-47** Notice to architect – works at practical completion
- SW-49** Final claim – summary sheet

Section D – Liability

Key points

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

Guidance

The risk allocation under the contract conforms to the widely accepted standard that the risk should reside with the party best able to deal with it (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 insurance policies under **section E** must remain in place until final certificate (see **clause E1**). This is for the benefit of both the owner and the contractor, even though there is a change in who bears the risks, under **clause D4**.

The contractor bears risks up to practical completion. Up to practical completion, the contractor must 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 must indemnify the contractor for any reinstatement work to the extent that the owner was responsible for the loss or damage.

Links

Section E (insurance requirements for the works).

Section M (when practical completion occurs).

Key points

- Contract works insurance and public liability insurance are essential because of the liabilities each party bears during construction, set out in **section D**.
- Typically, 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 give details.

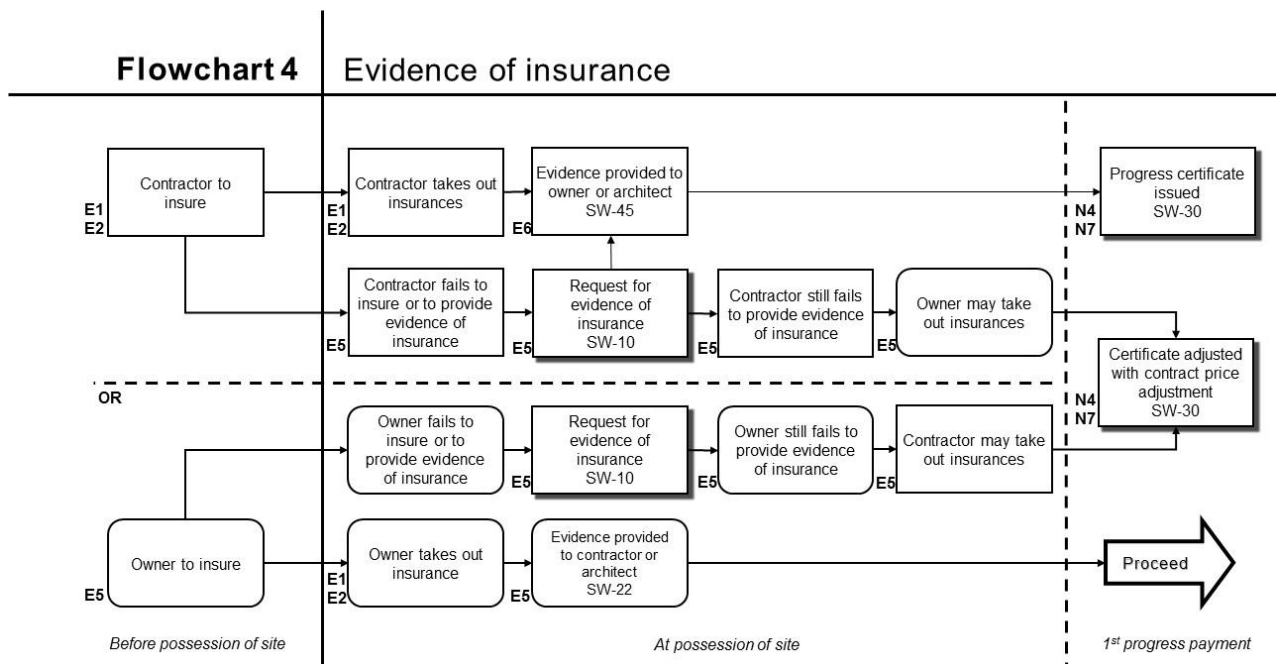
Guidance

Under the contract, one of the parties must take out contract works insurance (**clause E1**) and public liability insurance (**clause E2**). A policy taken out under either **clause E1** or **E2** does not need to cover the loss or liability caused by a breach of any professional duty that a consultant may owe. It is no longer typical for such insurance policies to cover those kinds of losses or liabilities. **Items 11 and 12 of schedule 1** determine whether the owner or the contractor must 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**.

When the owner is in occupation, it is more often the case that the owner has to take out the insurances. As for the case when the owner is not in occupation, the nomination of the party who is required to take out the insurance can be negotiated before the contract is executed. The nominated party should take advice from an expert such as an insurance broker.

The party responsible for obtaining the insurances must give evidence and details of them when requested (**clause E5**) or the other party is entitled to take them out and recover the premium costs by an adjustment in the next progress claim. If the contractor is required to take out the insurances, **clause N7.1b** 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

The contractor must maintain workers compensation and employers liability insurances (**clause E7**).

A claim on any of the insurance policies must be made promptly and contain all the relevant information. The contractor or the owner must notify the architect of the event giving rise to the claim and must give details of the claim.

The party making the claim must pay the excess on the insurance set out at **item 16 of schedule 1** (**clause E9**). The party can recover the excess from the other party to the extent that the loss resulted from the actions of the other party. The primary obligation to make an insurance claim falls to the contractor, under **clause E8.1**, unless the owner caused the event leading to the claim (**clause E8.2**).

As was noted in **section D**, if an event occurs between progress claims that causes loss or damage to the works or materials or equipment intended to be incorporated into the works, the contractor is obliged by **clause D5** to reinstate the works. The loss or damage may include work done between progress claims but for which the contractor is unable to claim and be paid for, even though the same work must be reinstated.. The contractor can submit an additional progress claim under **clause E10** for the value of the work (and materials) done the first time that was lost or damaged, before the contractor could claim for that work. This puts the contractor in the same position, even though the work lost or damaged is done twice.

Links

Item 11 and 12 of schedule 1 (who takes out and maintains insurance).

Item 13, 14 and 15 of schedule 1 (minimum limits on insurance cover).

Item 16 of schedule 1 (insurance excess).

Section D (liability).

Section M (practical completion).

Clauses N3, N4 and N7 (progress claims).

Architect's forms

SW-22 Notice of insurances

Contractor's forms

SW-45 Evidence of insurances – (contractor)

Key points

- The owner must give the contractor possession of the site.
- The contractor must give the owner and the owner’s agents reasonable access to the site.
- The contractor must have inspected the site information before taking possession.
- The contractor can make a time/cost claim if the contractor discovers a latent condition or a valuable item.

Guidance

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

The owner must give the contractor possession of the site within 10 working days after:

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

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

Contractor’s obligations

The contractor warrants that it has examined the site information and inspected the site before signing the contract.

The contractor has to give the owner or its agents (the architect, consultants and others) access on reasonable terms to the site. Reasonable terms include compliance with the contractor’s WH&S system in place (or a site requirement that all persons must be inducted).

The contractor now has a stronger right to exclude persons from the site if they do not comply with the contractor’s WHS policies and procedures (**clause F2**), without the need to give that person prior notice.

Time/cost claims

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

Latent conditions or valuable items

Action	Clause	Form
1. If the contractor discovers a latent condition or a valuable item, it must notify the architect in writing within 5 working days after the discovery, seeking instructions.	F5	SW-40
2. The architect must give the contractor a written instruction promptly.	F6	SW-10
3. The contractor must comply with the instruction.	A2	
4. If the instruction will have time/cost implications, the contractor is entitled to make a time/cost claim.	F7	SW-41
5. The requirements for making a time/cost claim and the procedures to be followed are stated in section H .	H1	

Links

Section E (insurance).

Section H (time/cost claims).

Architect’s forms

SW-10 Instruction

Contractor’s forms

SW-40 Request for information/instruction/notice

SW-41 Notice of intention to claim

SW-42 Details of claim

SW-43 Additional information

SW-55 Contractor’s notice

Section G – Building the works

Key points

- The owner must give the contractor sufficient information to allow the contractor to set out the works.
- The contractor has various obligations to the owner including being liable to the owner for necessary work done by subcontractors.
- The contractor must give the owner a program.
- The architect can instruct the contractor to open up, test or suspend elements of the works.
- The contractor owns unfixed and demolished materials, unless the contract documents say otherwise.

Guidance

Setting out the works

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

Contractor's obligations

The contractor has various obligations to the owner set out in **clause G2**. The contractor must appoint a representative, whose contact 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 must ensure that its agreements with its subcontractors and suppliers include all the relevant provisions of the principal contract.

Program

The contractor must give the owner a program or any updated program for the works but the program is not a contract document. If the date for practical completion has been adjusted by five working days or more (**clauses G5 and G6**) the contractor must give an updated program.

Opening up or testing the works

Under **clause G7**, at any time the architect can instruct the contractor to open up or carry out tests on elements of the works. **Clause G8** enables the contractor to make a time/cost claim for any loss resulting from such an instruction, but the contractor cannot make a time/cost claim if:

- defective work is revealed or
- the test is one that is required by the contract, such as one required by **item 23 of schedule 1**.

Unfixed and Demolished Materials

Clause G9 is a new provision that clarifies the common practice that the contractor will own all demolished materials (as they become demolished) and the contractor owns all unfixed materials, until the owner has paid for them and title to them passes to the owner (**clause G9**). The parties can agree to different ownership arrangements for demolished or unfixed materials, by specifying in the contract documents which party will supply and own various materials.

Links

Item 23 of schedule 1 (testing).

Section H (time/cost claims).

Architect's forms

SW-10 Architect's instruction

Contractor's forms

SW-40 Request for information/instruction/notice

SW-41 Notice of intention to claim

SW-42 Details of claim

SW-43 Additional information

SW-46 Program

Claims to adjust the contract – Section H

Key points

- A claim to adjust the contract can be a claim for an adjustment of costs, an adjustment of time, or both (time/cost claim).
- **Section H** sets out the procedures to be followed whenever a claim to adjust the contract is made.

Guidance

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

Time/cost claims procedure

Action	Clause	Form
1. The contractor can only make a time/cost claim where the contractor: <ul style="list-style-type: none">• promptly notifies the architect of its intention to make a claim after receiving an instruction from the architect or becoming aware of an event that will result in a claim and• submits a claim within a time agreed with the architect, or, if nothing agreed, within 20 working days.	H1, H2	SW-41 SW-42
2. If a claim results from a delay, the contractor does not have to notify the architect of its intention to make a claim, but must still submit a claim within 20 working days after the delay ends.	H1.3	SW-55 SW-42
3. The architect must promptly assess the claim.	H3	
4. If the architect reasonably requests additional information, the contractor must give it promptly.	H3	SW-43
5. The architect must give a written decision within 20 working days after receiving the claim.	H4	SW-13
6. The contractor can dispute the decision but must continue to perform its obligations under the contract, including the change.	H4, A8, P1	SW-57A SW-57B
7. If the decision adjusts the contract price, the contract price will be adjusted in the next progress claim.	N4	

Item 18 of schedule 1 allows the parties to agree in advance rates for delay costs. The inclusion of the rates does not alter the contract requirements of **clauses H1 to H4**. If no rates are shown, the contractor is entitled to the actual amount of the delay costs incurred as a result of any adjustment (**clause H5**), but must establish these to the satisfaction of the architect who must assess the claim under **clause H3**.

The architect has the discretion to adjust the contract as a result of a variation or delay (**clause H6**) at any time up to the date of issue of the final certificate or a certificate issued under **clauses Q9 or Q17**, even if the contractor has not made a claim.

Section H – Claims to adjust the contract

Links

Item 17 of schedule 1 (percentage for overhead and profits).

Item 18 of schedule 1 (delay costs).

Clause A8 (disputes).

Clause N4 (progress claim).

Section S (a claim to adjust the contract).

Architect's forms

SW-10 Architect's instruction

SW-13 Instruction – to proceed/not proceed with a variation

Contractor's forms

SW-41 Notice of intention to claim

SW-42 Details of claim

SW-43 Additional information

SW-55 Contractor's notice

SW-57A Notice of dispute (acts done)

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

Section I

Not used.

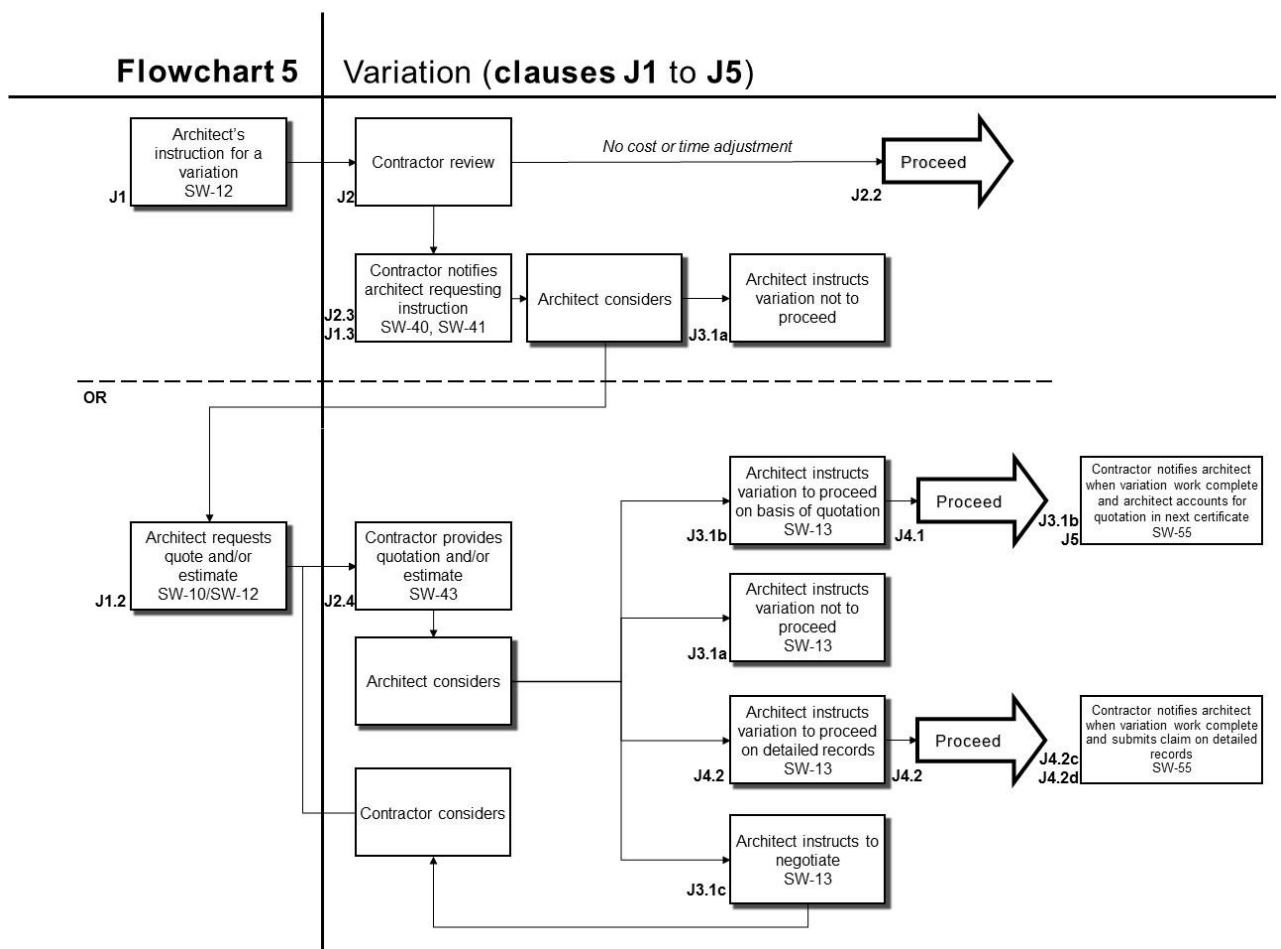
Variation to the works – Section J

Key points

- The architect may issue an instruction for a variation (**clauses J1 to J5**). A variation may or may not result in a cost adjustment.
- If an authorised person issues an official document, the contractor may request a variation for the works (**clauses J6 to J8**).
- If the contractor receives an instruction to change something documented which has time/cost implications and then proceeds without seeking and receiving an instruction to proceed from the architect, it waives its right to make a time/cost claim later.

Guidance

Section J deals with variations to the works. There are four different situations covered by the section, discussed below.



Section J – Variation to the works

Architect’s instruction for a variation (clauses J1 to J5)

Action	Clause	Form
1. Architect issues an instruction for a variation.	J1	SW-10 SW-12
2. The contractor may request an instruction for a variation from the architect	J1	SW-40
3. Contractor reviews instruction and if it considers there are no time/cost implications, it must carry out the instruction promptly.	J2	
4. There may be time/cost implications where: <ul style="list-style-type: none"> the instruction includes a request for an estimate of the cost or saving of a variation, or a request for a quote or an estimate of the delay or the contractor notifies the architect within 20 working days that a variation will have time/cost implications. In which case, the following provisions apply. 	J1, J2	SW-10 SW-12 SW-41 SW-55
5. Within 5 working days after receiving the contractor’s request or notification, the architect must further instruct the contractor: <ul style="list-style-type: none"> that the variation will or will not proceed to negotiate with the architect about the variation. 	J3	SW-13
6. If the architect accepts the contractor’s quotation, the contract price will be adjusted with the next progress claim.	J5, N4	
7. If the contractor is instructed to proceed but the quotation is not, or only partly accepted, the contractor must proceed with the variation promptly and maintain detailed records for that part of the variation for which the quotation is not accepted.	J4, H1	
8. When the work for the variation is completed, the contractor must: <ul style="list-style-type: none"> give written notice to the architect and submit a detailed claim within 20 working days after completion of the work. 	J4, H2	SW-41 SW-55 SW-42

Official document and variations (clauses J6 to J8)

Action	Clause	Form
1. On receiving an official document (see clause B3), the contractor must: <ul style="list-style-type: none"> notify the architect promptly give the architect a copy of the official notice and request an instruction. 	J6	SW-59
2. The architect must issue a written instruction promptly. The instruction must request an estimate of the cost or saving of a variation, or a request for a quote or an estimate of the delay.	J7	SW-10 SW-12
3. The contractor can only make a time/cost claim for any loss, expense or damage resulting from the instruction where the circumstances giving rise to the official document were beyond the contractor’s control.	J8,H2	SW-41 SW-42 SW-55

Links

Clause B3 (definition of an official document).

Section H (procedures for time/cost claims for variations).

Architect’s forms

- SW-10** Architect’s instruction
- SW-12** Instruction – for a variation
- SW-13** Instruction – to proceed/not proceed with a variation

Contractor’s forms

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

Adjustment of provisional and prime cost sums – Section K

Key points

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

Guidance

In **clause K1**, the contract distinguishes between a provisional sum that allows for foreseeable necessary work, including supply of materials, and a prime cost sum that allows for the supply or the supply and installation of an 'off-the-shelf' item that is not yet fully specified. Allowances for provisional and prime cost sums are set out in **schedule 6** and **schedule 7** of the contract.

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

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

The contract price, must include all the contractor's costs including preliminaries and its overheads and profit associated with the work involved with provisional sums and prime cost sums, and for the time that the work may take.

The architect must determine the provisional sums and prime cost sums that are required for the project, and they should be set out in the relevant schedule for the information of tenderers.

Architect can instruct a person

The architect can instruct that a particular person other than the contractor is to undertake the work associated with a provisional sum or to supply or supply and install an item covered by a prime cost sum. If so, the person or the intent to instruct the contractor to use a particular person must be shown in **schedule 6** or **schedule 7**, as applicable (see **clause K3**).

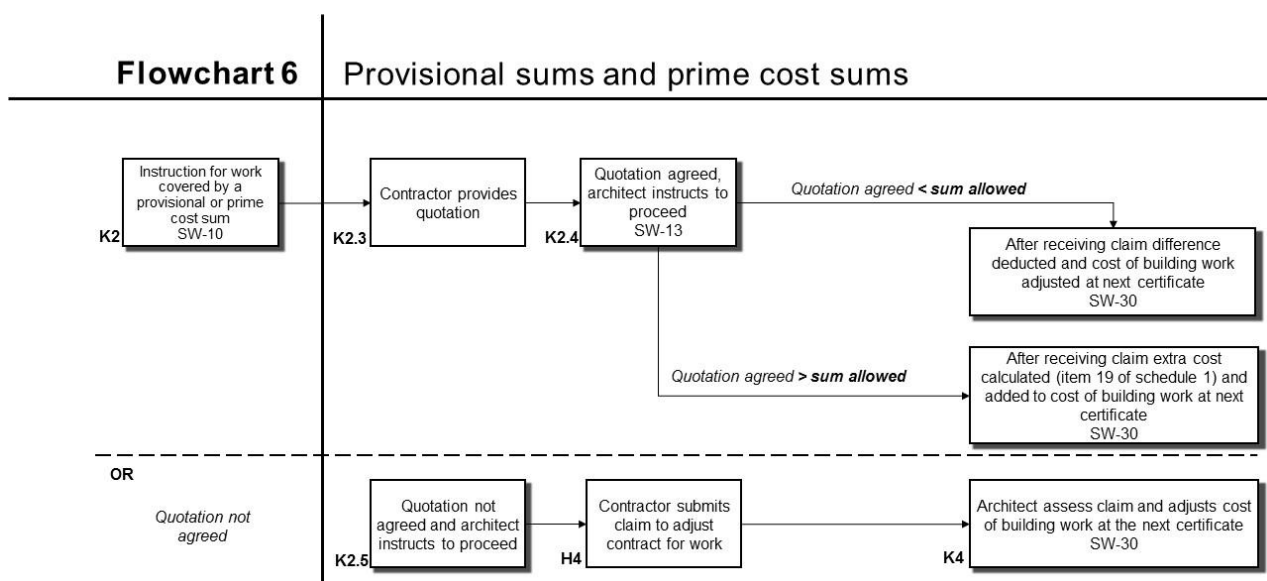
Architect's instructions for prime cost or provisional sum items

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

Action	Clause	Form
1. The architect instructs the contractor to give a written quotation for the supply and installation of an item for which a provisional or prime cost sum is allowed.	K2	SW-10
2. The contractor must give a quotation and cannot proceed unless it receives an instruction to proceed (does not apply for a prime cost sum for payment of a fee or charge to an authority – see clause K2.6).	K2.3 K2.6	SW-43
3. The quotation can only be for the direct cost to the contractor excluding any margins for preliminaries, overheads, profit or GST.	K2.3	
4. If the architect agrees with the quotation, the architect must issue an instruction to proceed, except for a prime cost sum for payment of a fee or charge to an authority.	K2.4	SW-13

Section K – Adjustment of provisional and prime cost sums

Action	Clause	Form
5. If the cost of the accepted quotation is greater than the allowance, the contract price will be increased by the excess over the provisional sum or prime cost sum multiplied by the rate contained in item 19 of schedule 1 .	K4.2	
6. If the cost of the accepted quotation is less than the allowance, the excess of the provisional or prime cost sum over the cost will be deducted from the contract price.	K4.3	
7. If the architect does not agree with the quotation, or has not requested a quotation, the architect may issue an instruction to proceed and must issue a decision under clause H4 in response to the contractor's claim for adjustment to the contract.	K2	SW-13
8. The contractor can dispute the decision.	H4, A8	SW-57A
9. The contractor must continue to perform its obligations under the contract.	P1	
10. The architect must adjust the contract price to take account of any difference in cost in relation to a fee or charge paid to a relevant authority.	K4	



Links

Item 19 of schedule 1 (percentage of difference between cost and allowance for sum).

Schedule 6 (provisional sums).

Schedule 7 (prime cost sums included in the contract).

Architect's forms

SW-10 Architect's instruction

SW-13 Instruction – proceed/not proceed with variation

Contractor's forms

SW-43 Additional information

SW-57 Notice of dispute (acts done)

Adjustment of time – Section L

Key points

- The contractor can make a claim for an adjustment of time **with costs** for some specific delays.
- The contractor can make a claim for an adjustment of time **without costs** for other delays but only where those delays exceed the allowances set out in **items 20** and **item 21** in **schedule 1** of the contract.
- There are restrictions on claiming overlapping delays affecting critical activities.

Guidance

The contract sets out particular causes of delay that entitle the contractor to make a claim for an adjustment of time **with costs** (**clause L1.1**). They are:

- Loss or damage to the works or material or equipment to be incorporated into the works (not caused by the contractor).
- The owner failing to give possession of the site.
- An architect's instruction.
- An authority failing to give prompt approval for the works.
- A dispute with a nearby owner or occupier.
- The owner's consultants failing to promptly give necessary information to the contractor.
- Widespread industrial unrest not limited to the site.
- A suspension of the necessary work under **clause Q12**.
- A breach of the contract by the owner.
- An act of prevention caused by the owner.

Procedure for making a claim for time, but not costs

Action	Clause	Form
1. A contractor can make a claim for an adjustment of time without costs for other delays (clause L2.1) but only where they exceed the provisional allowances in the contract (item 20 and item 21 of schedule 1).	L2.1	SW-41 SW-42
2. The provisional allowances are for delay due to weather conditions and for other delays, if any, peculiar to the circumstances in which the works are to be constructed (item 20 and item 21 of schedule 1).	L2	SW-41 SW-42
3. The contractor notified the architect when the progress of the works is delayed by any of the allowed causes within 2 working days after becoming aware of the start or end of a delay (clause L3). This includes a delay that falls within a provisional allowance. The contractor is not entitled to an adjustment of the date for practical completion unless the delay has exceeded the provisional allowance stated in item 20 and item 21 of schedule 1 for that delay.	L3 L5	SW-41 SW-42
4. The requirements for making a claim and the procedures to be followed are stated in section H .	L2.2	SW-41 SW-42

Clause L6 allows the contractor to claim for overlapping delays that affect one or more critical construction activities. The contractor can claim for the time commencing at the first overlapping delay to the end of the last overlapping delay that extends the delay begun by the first overlapping delay. However, the contractor can only claim costs for an overlapping delay set out in **clause L1** that is not simultaneous with a delay set out in **clause L2**.

Section L – Adjustment of time

Procedure for making a time/cost claim for delay

Action	Clause	Form
1. The contractor must notify the architect that the works are being delayed within 2 working days after the start of the delay. Also, the notice must state: <ul style="list-style-type: none">the time the delay beganeach cause of delay, if delays overlap andan estimate of the number of working days affected.	L3	SW-60
2. The contractor must notify the architect that the works are no longer being delayed, within 2 working days after the end of the delay.	L3	SW-60
3. The requirements for making a claim and the procedures to be followed are stated in section H .		SW-41 SW-42

Links

Item 20 and **item 21** of **schedule 1** set out provisional allowances for weather and other delays respectively.

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

Architect's forms

SW-14 Instruction – adjustment of time

Contractor's forms

SW-60 Notice of start or end of delay

Key points

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

Guidance

Practical completion

In **clause M1**, the contractor must bring the works to practical completion by the date shown in **item 22 of schedule 1**. This date may be adjusted under the contract. The works have reached practical completion when in the architect's reasonable opinion:

- they are substantially complete and any incomplete works or defects are relatively minor and will not unreasonably affect occupation.
- all commissioning tests set out in **item 23 of schedule 1** have succeeded.
- the parties have given the architect all official documents required for occupation (see **item 30 of schedule 1**).

The owner takes possession of the works at 4.00pm on the day that the architect issues the notice of practical completion. The notice triggers release of 50% of the security in accordance with **clause C6**.

The contractor is required to bring the works to completion by the adjusted date for practical completion. If the works are not complete by the adjusted date for practical completion, liquidated damages may apply.

The contract requires a defects liability period to be stated. If none is stated, then a default period of 12 months will apply and the contractor's obligations during this period are defined in **clause M14**. A different defects liability period may be nominated in **item 25 of schedule 1**.

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 list of defects and incomplete works 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 and completion of any incomplete work.

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 showing that any defects and incomplete work have been corrected or completed to the contractor's satisfaction.
- The architect must commence inspection of the works promptly and complete the inspection either within an agreed time or 10 working days. The architect must then issue a notice of practical completion under **clause M4**, or a notice that the works are not at practical completion under **clause M5**.
- During the inspection period, the contractor must give the architect copies of any official documents required for occupation and evidence that any commissioning tests set out in **item 23 of schedule 1** have been successful.

Section M – Completion of the works

Under **clause M7**, if, after completing the inspection(s) of the works, the architect fails to issue a notice of practical completion or a notice under **clause M4** or **M5** on time:

- the date of practical completion will be the date claimed,
- half of the security must be released, and
- the contractor may make a claim for any loss or damage it suffers.

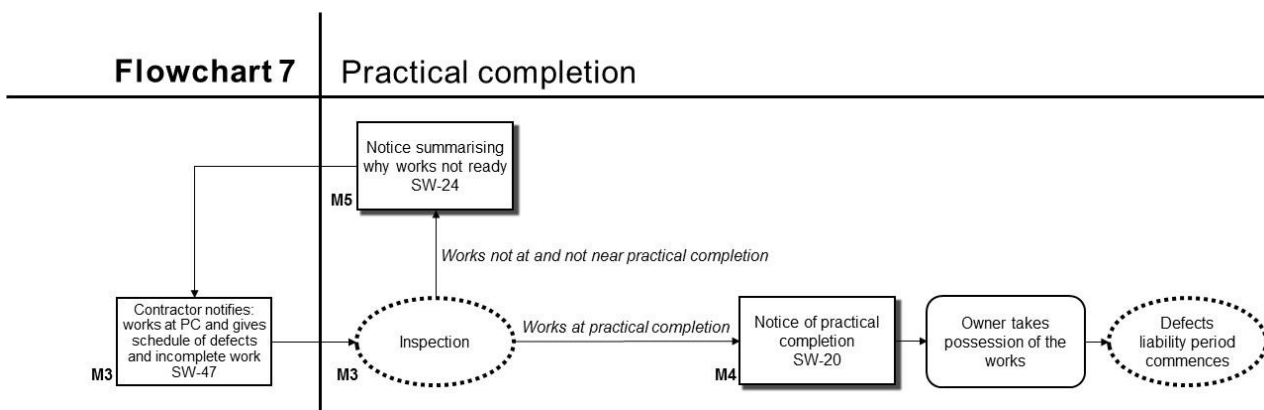
Under **clauses M9** and **M10**, liquidated damages only apply if the works are not complete by the adjusted date for practical completion and the owner makes a decision to have the architect apply them. The owner must decide to apply them no more than 20 working days after the date on which the notice of practical completion was issued, or cannot apply liquidated damages under the contract. The rate for liquidated damages must have been scheduled when the contract was signed to have any effect, as there is no default rate in the contract.

Clauses M11 and **M12** set out how the contractor is required to correct defects and finalise the work.

Clauses M13 and **M14** set out the contractor’s obligation to rectify defects during and after the defects liability period.

Practical completion

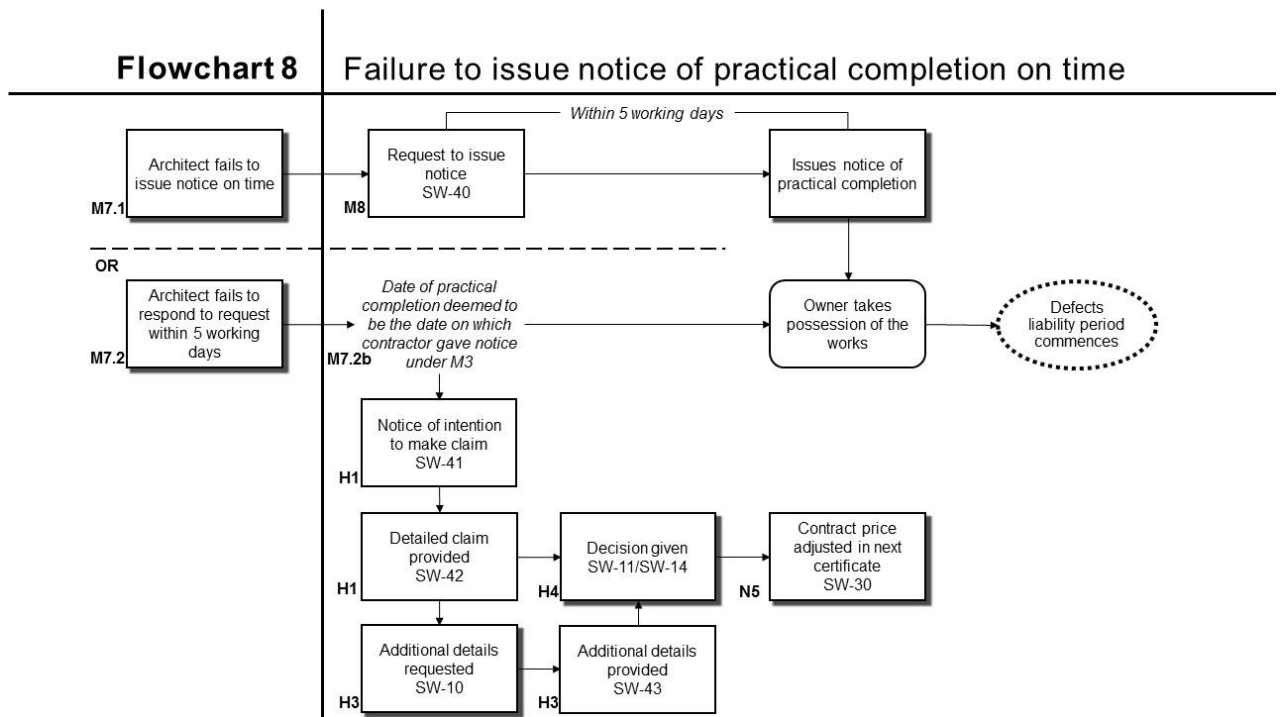
Action	Clause	Form
1. The contractor must notify the architect 10 working days before the works reach practical completion and agree a program for the inspection(s) of the works.	M2	SW-47
2. The architect must commence the inspection(s) promptly and complete the inspection(s) within 10 working days. A longer period for the inspection(s) may be agreed with the contractor for more complex projects.	M3	
3. If the architect considers that the works have reached practical completion, the architect must issue the notice of practical completion within 5 working days after the completion of the inspection(s).	M4	SW-20
4. If the architect considers that the works have not reached practical completion, and are not near practical completion, the architect must issue, within 5 working days after the completion of the inspection(s), a statement to the contractor to that effect, with reasons.	M5	SW-23
5. If the architect issues a statement under clause M5 , the contractor must promptly do whatever is necessary to bring the works to practical completion.	M6	



Completion of the works – Section M

If the architect fails to issue notice of practical completion on time (**clause M7**)

Action	Clause	Form
1. The contractor must notify the architect that it considers that the architect has failed to issue a notice under clause M4 or M5 on time and request issue of the notice.	M7.1	SW-55
2. If the notice is not issued within a further 5 working days, the contractor may advise its intention to make a time/cost claim.	M7.2	SW-55
3. The date for practical completion will be the date identified in the contractor's notice, above and any security must be released in accordance with clause C6 .	M7.2, C6	
4. The requirements for making a claim and the procedures to be followed are stated in section H .		



Section M – Completion of the works

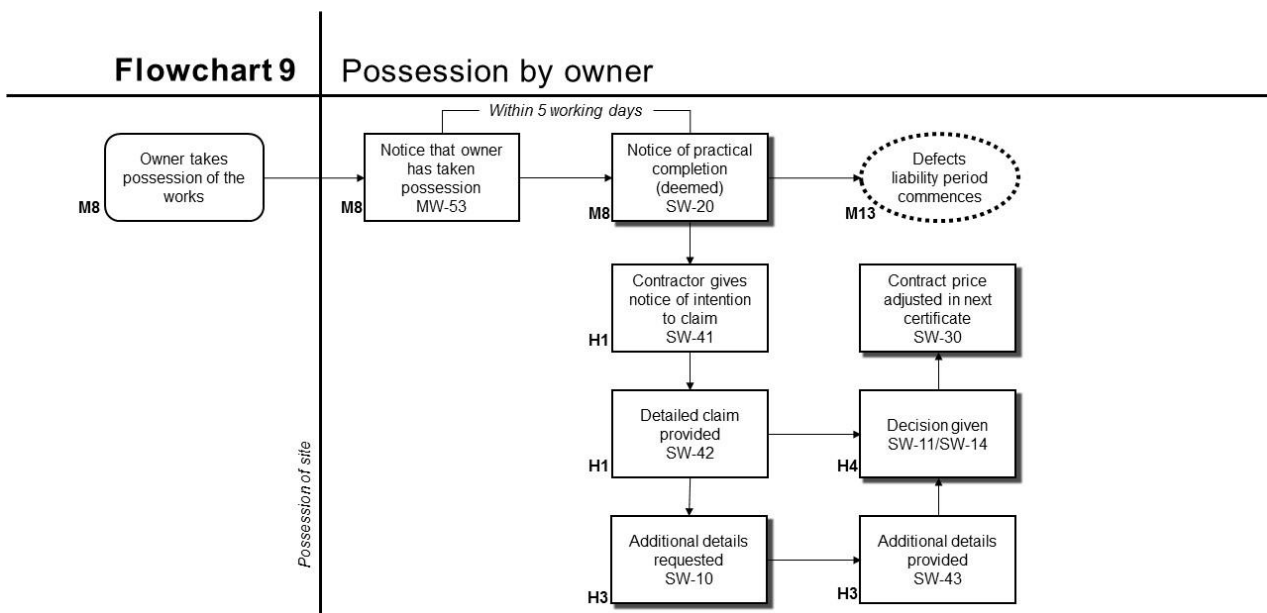
If the owner takes possession before practical completion (**clause M8**)

Action	Clause	Form
1. If the owner has occupied the works then practical completion is deemed to have been achieved	M8.1	SW-55
2. The architect must issue the notice of practical completion within 5 days after being advised of the owner's occupation.	M8.1	SW-20
3. Possession of the works is to be treated as if it is an amendment to the program for the works and the contractor can make a time/cost claim.	M8.2, H1	
4. The issue of the notice of practical completion triggers release of security in accordance with clause C6 .	C6	
5. The requirements for making a claim and the procedures to be followed are stated in section H .		

Owner in Occupation and taking possession before Practical Completion

Note that when the owner remains in occupation (**item 3 of schedule 1**) this means occupation of the **site* which the owner gives the contractor access to under **clause A4.1c**, as amended by **schedule 2b**.

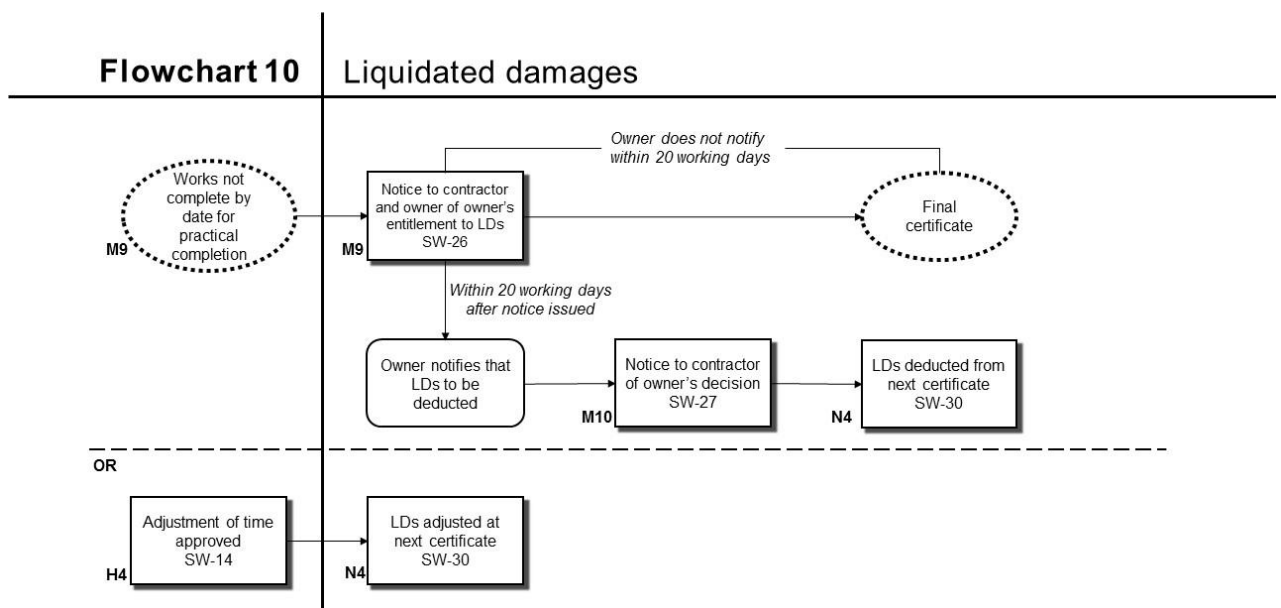
Clause M8.1 is triggered when the owner takes possession of (occupies) the **works* in a way that is inconsistent with the contractor carrying out the **works* on the **site*.



Liquidated damages – Section M

Liquidated damages (clauses M9 and M10)

Action	Clause	Form
1. If the works are not complete by the adjusted date for practical completion, the architect must notify the contractor and the owner of the owner's entitlement to apply liquidated damages.	M9.1	SW-26
2. If the owner decides that liquidated damages are to be deducted, it must request the architect to do so in writing no more than 20 business days after issue of the architect's notice of practical completion. The architect must immediately notify the contractor of the owner's decision, within one working day.	M9.2 M10.1	
3. When the architect prepares the next progress certificate, it must deduct the amount of liquidated damages to which the owner is entitled.	M10.1, N4	SW-30
4. If, after liquidated damages have been deducted, an adjustment of time is granted, with the result that the owner's entitlement is altered, the architect must make an appropriate adjustment in the next progress certificate.	M10.2, N4	SW-26



Correcting defects and finalising work (clauses M11 to M14)

The contractor must correct any defects or finalise any incomplete work within the time agreed or within 10 working days after receiving a written instruction from the architect.

If the contractor does not remedy the defects or finalise any incomplete work in the time agreed or nominated in the instruction, or show the architect reasonable cause why it cannot with a timetable for rectification acceptable to the architect, the owner may use another person to rectify a problem and make a claim for that cost against the contractor.

The defects liability period is shown in **item 25** of **schedule 1** and starts on the date of practical completion. Where any part of the works has undergone significant correction, a further defects liability period of equal length will apply from the date of acceptance of the correction.

The contractor must remedy any defect or incomplete work notified during the defects liability period. The contractor may have to remedy a defect or complete work after the defects liability period is completed if so notified (**clause M14**).

The architect cannot notify the contractor of a defect or incomplete work after the defects liability period is over unless it is for the rectification of a latent defect and it is before the issue of the final certificate.

Section M – Completion of the works

Links

- Item 22 of schedule 1** (date for practical completion).
- Item 23 of schedule 1** (commissioning tests required).
- Item 24 of schedule 1** (rate for liquidated damages).
- Item 25 of schedule 1** (defects liability period for the works).
- Item 30 of schedule 1** (official documents obtained by the owner).
- Section D** (risks before and after practical completion).
- Section E** (insurance before and after practical completion).

Architect's forms

- SW-15** Instruction – to correct defects or finalise work
- SW-20** Notice of practical completion
- SW-23** Notice that works not at practical completion
- SW-26** Notice of entitlement to liquidated damages
- SW-27** Notice of application of liquidated damages

Contractor's forms

- SW-47** Notice to architect – works at practical completion
- SW-53** Notice of possession of the works before practical completion
- SW-55** Contractor's notice

Key points

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

Guidance

This section defines the owner's obligation to pay progress claims and the final claim and sets out the procedures that apply when claiming progress payments and assessing claims.

The contract price is required to include all provisional and prime cost sums and relevant costs associated with completing the works and specifically includes rise and fall, tariffs and duties and industrial costs such as award payments and site allowances.

Under **clause N3**:

- The contractor may submit one claim to the architect each month on or after the date in the month shown in **item 26** of **schedule 1** unless the architect and contractor agree in writing a different date.
- The claim must set out the contractor's valuation of the: work completed, materials and equipment delivered to the site, all related to the cost of building work up to and including the day of the claim.
- The claim must include the amount of GST.
- The claim must include a declaration 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.

The architect must then issue progress certificates within 10 business days after receiving a claim. If the architect fails to do so, the contractor may request the architect to issue the certificate. If the architect fails to do so, within 5 working days after the request, the contractor is entitled to be paid the full amount of the claim within 7 calendar days after the written request was delivered. If the owner then fails to pay, the contractor may suspend the works and may make a claim for any resultant loss or damage.

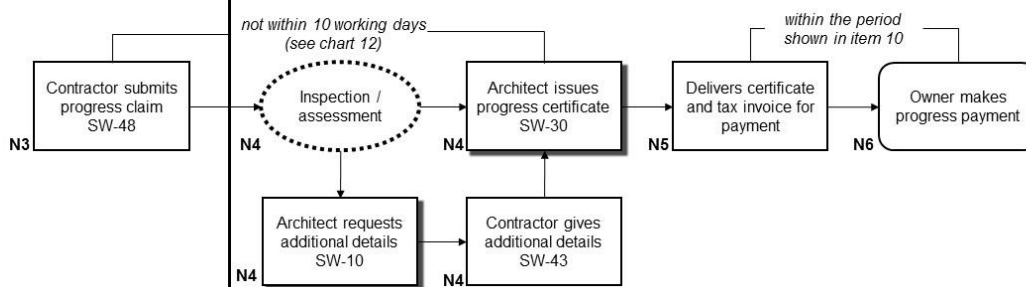
The contract requires the contractor to prepare a tax invoice for the same amount as the certificate and present both documents to the owner for payment. The architect's certificate must therefore include GST and should identify the amount of GST that is included in the claim.

Section N – Payment for the works

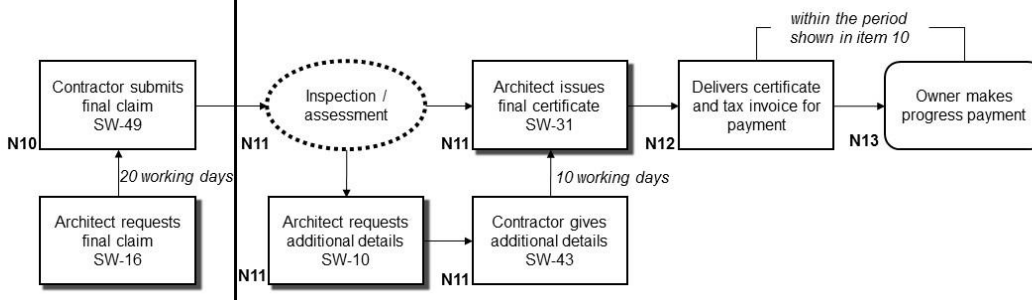
Progress payments and final payments

Action	Clause	Form
1. The contractor may submit a progress claim for each agreed period, supported by information required in the schedules and declarations required by the contract.	N3.1	SW-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.	N4.4	SW-10
4. The architect must issue a progress certificate to the contractor and to the owner within 10 business days after receiving a valid claim from the contractor.	N4.1	SW-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.	N5	
6. The payment must be made within the period shown in item 10 of schedule 1 (default period is 7 calendar days after delivery of the certificate and the tax invoice).	N6	
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	SW-49
8. The architect must promptly (but within 10 working days after receiving the final claim or any requested information) assess the final claim.	N11	
9. If the contractor fails to give 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 after receiving the final claim from the contractor.	N11.1	SW-31
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	
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	

Flowchart 11 Progress payments



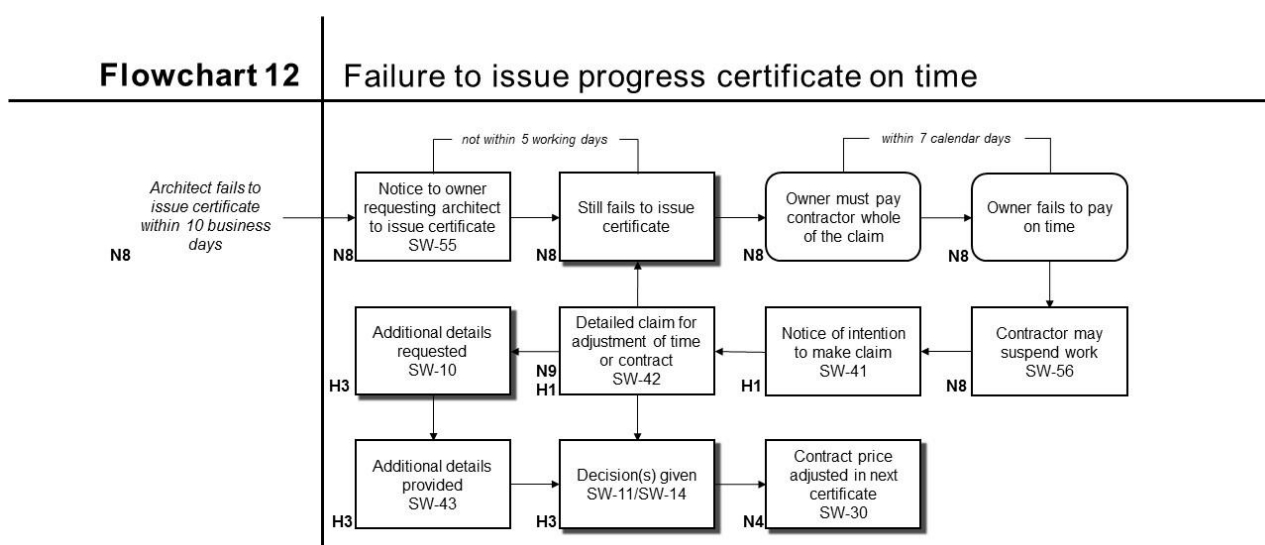
Final payment



Payment for the works – Section N

If the architect fails to issue a progress certificate on time (**clause N8**)

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.	N8.1	SW-55
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.	N8.2	
3. If the owner does not pay the full amount by then, the contractor may immediately suspend work.	N8.3, Q12	SW-56
4. The contractor may claim for any loss, damage or expense that results from the suspension and must promptly notify the architect that it intends making a time/cost claim.	N9, H1	
5. The requirements for making a claim and the procedures to be followed are stated in section H .		



Deposit given by the owner (domestic, H versions only)

This guidance applies only to the domestic 'H' versions of SW 2018, for each state and territory.

A deposit under ABIC is an "advance" or pre-payment towards the final contract price. It is not a security deposit or payment. Because the deposit is a part-payment towards the contract price that includes GST, the deposit amount written into **item 30a** (or the equivalent in the state and territory 'H' **schedule 1**), must also include GST.

If the parties have selected 'Yes' under **item 30a** (or the equivalent), then **clause N16** takes effect. The contractor must not apply the deposit amount to any other cost or liability, but must pay it towards the **cost of building work*.

The contractor cannot claim or demand payment until the conditions in **clause C3** are met and all insurances are in place (**section E**). The domestic building legislation in some states/territories impose further conditions on the contractor, before a deposit can be paid. Refer to the domestic building legislation or accompanying consumer building guide that is applicable in the state/territory of the **site*. A copy of the required consumer guide is included with every domestic 'H' contract pack.

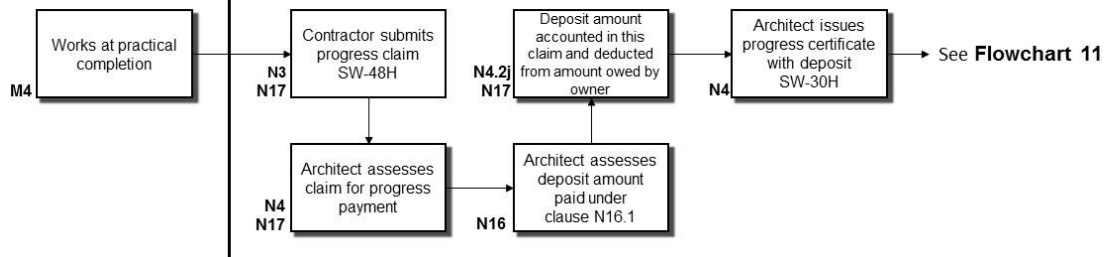
Timing of assessing deposit paid

The deposit, if payable, must be assessed by the architect in that claim the contractor submits after practical completion (**clause N17**). The procedure for doing so is set out in **clause N4** and the deposit amount is assessed under **clause N4.2j**.

Section N – Payment for the works

Flowchart 13

Deposit: claim and certify



Links

Item 10 of schedule 1 (when certificate has to be paid).

Item 26 of schedule 1 (date for submitting progress claims).

Item 27 of schedule 1 (information to be included in a progress claim).

Item 28 of schedule 1 (interest rate on overdue amounts).

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

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

Architect's forms

- SW-10** Architect's instruction
- SW-30** Progress payment certificate
- SW-30H** Certificate of payment with deposit (domestic only)
- SW-31** Final certificate

Contractor's forms

- SW-48** Progress claim – summary sheet
- SW-48H** Progress claim with deposit (domestic only)
- SW-49** Final claim – summary sheet
- SW-55** Contractor's notice
- SW-56** Notice of suspension/termination

Section O

Not used.

Key points

- The parties must continue to perform their obligations even though there is a dispute.
- At least one party has to serve a written notice on the other to trigger the dispute resolution procedures.
- There must be 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.

Guidance

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

Disputes

Action	Clause	Form
1. Written dispute notice stating what the dispute is, delivered to the other party.	P2.1	SW-58
2. Within 5 working days after the notice, the representatives of the parties have a compulsory conference.	P2.1a	
3. Within 10 working days after the notice, if there is no resolution to the dispute, there must be a further conference of representatives of the parties who have authority to settle the dispute.	P2.1b	
4. Within 10 working days after the dispute notice, the parties may agree in writing on mediation.	P3.1	
5. The decision of a mediator cannot be reviewed under the contract. A party must take legal action to review the decision.	P3.7	

In general, a party may only take legal action either after the compulsory conference or if the parties have pursued mediation, following the decision of the mediator. A party can take legal action at any time (**clause P4**) only if:

- a dispute has to be resolved urgently or
- the dispute relates to payment already due under a certificate issued.

Contractor's forms

SW-58 Contractor's notice of dispute

Section Q – Termination of engagement

Key points

- The owner or the contractor may terminate the engagement of the other party where that party becomes insolvent or breaches a substantial obligation under the contract and does not rectify the breach or show cause why it cannot. A failure by the owner to pay a progress payment on time is a breach of a substantial obligation.
- In some cases, the contract can be frustrated. Frustration is a legal term and legal advice should be obtained before claiming that the contract is frustrated.

Guidance

If one party is insolvent, the other party may immediately terminate the engagement under the contract by sending a written notice to the insolvent party.

A party's entitlement to terminate may, however, be subject to a limitation under the *Corporations Act 2001* (Cth). Certain provisions within the *Corporations Act 2001* (Cth) provide that an automatic right to terminate, due to an *insolvency event* may be subject to limitations; particularly, if that party has entered into certain arrangements for the purpose of avoiding being wound up in insolvency.

If the parties are unsure as to whether provisions under the *Corporations Act 2001* (Cth) limit their rights under **clause Q2**, they should seek legal advice.

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. It is strongly recommended that the parties get legal advice before initiating any termination acts or process. 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:

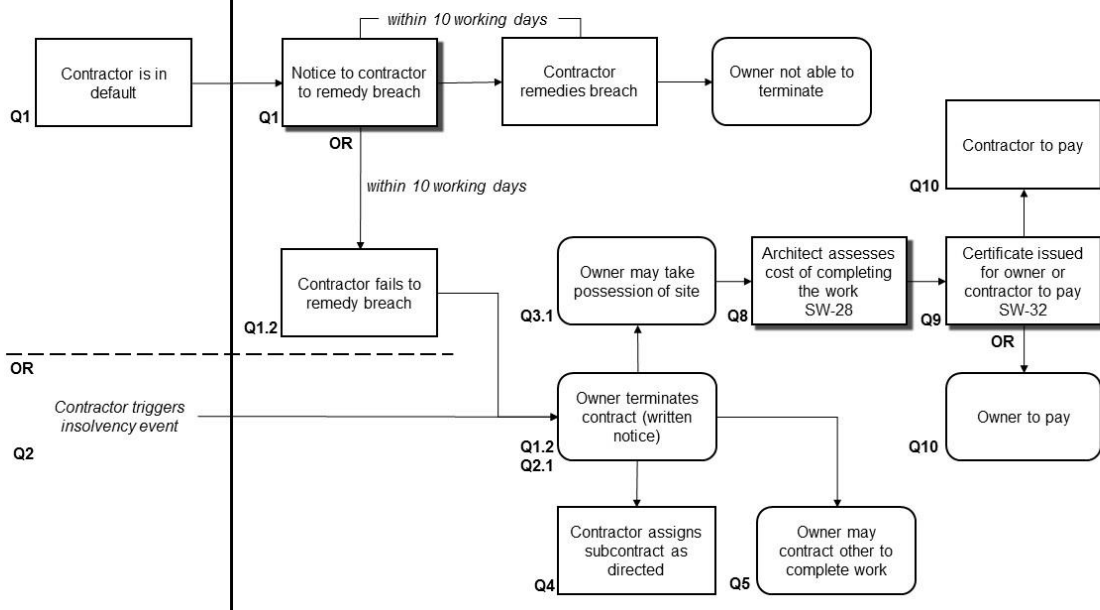
Termination by the owner (clauses Q1 to Q10)

Action	Clause	Form
1. If the contractor fails to meet a substantial obligation under the contract, the owner may give written notice that must: <ul style="list-style-type: none"> • specify the breach • require the contractor to remedy the breach within 10 working days and • state that the notice is given under clause Q1. 	Q1	SW-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	SW-10
3. Immediately terminate the engagement of the contractor if the contractor becomes insolvent. The owner gives a written notice stating that it is given under clause Q2 .	Q2	SW-10
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	
5. After termination under clause Q1 or Q2 (owner takes possession): <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	SW-10

Termination of engagement – Section Q

Action	Clause	Form
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. 	Q4 – Q8	SW-28 SW-32
7. 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.	Q9	SW-32
8. 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	
9. The certificate takes the place of a final certificate under clause N10 and any security must be released.	Q9 C6	SW-31
10. The amount must be paid within the period shown in item 10 of schedule 1 .	Q10	

Flowchart 14 Termination by owner

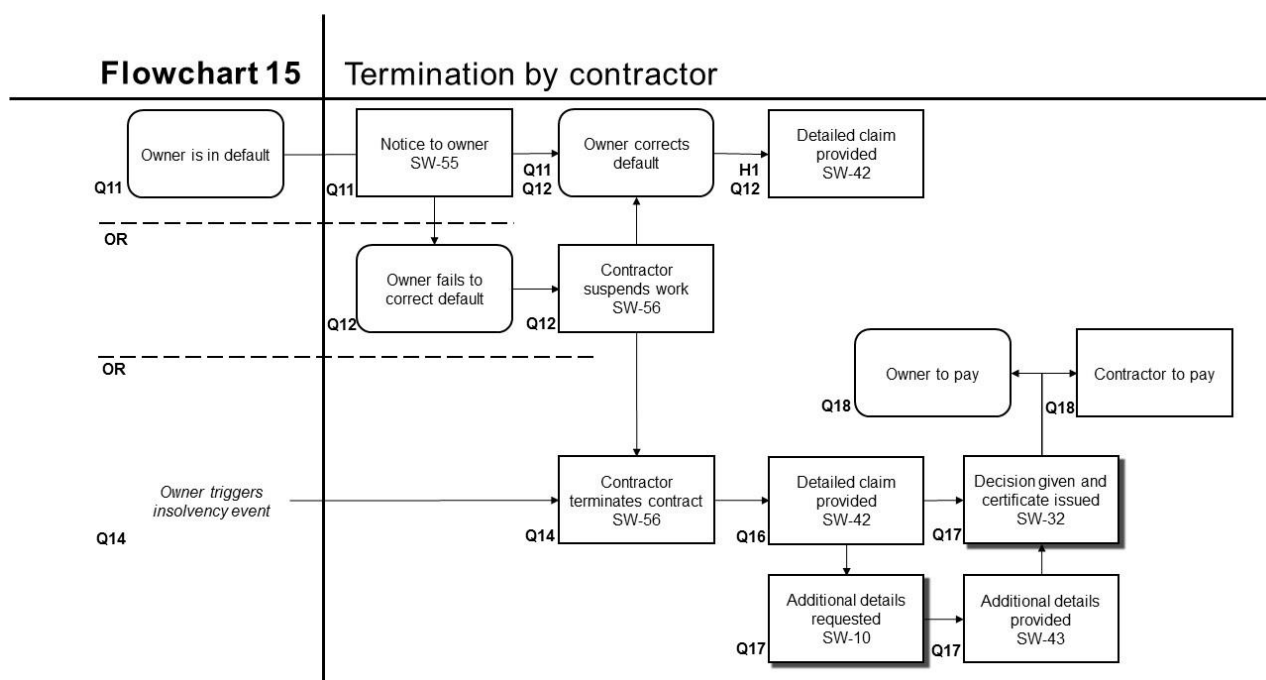


Section Q – Termination of engagement

Termination by the contractor (**clauses Q11 to Q18**)

Action	Clause	Form
<p>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:</p> <ul style="list-style-type: none"> specifying the breach requiring the owner to remedy the breach within 10 working days stating that the notice is given under clause Q11 and that if the default is not remedied within 10 working days the contractor will be entitled to suspend the works. 	Q11	SW-55
<p>2. If:</p> <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 N8.3 <p>the contractor may suspend the works by giving written notice stating that the works are suspended under clause Q12.</p>	Q12	SW-56
<p>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.</p>	Q13	SW-56
<p>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.</p>	Q14	SW-56
<p>5. If the contractor terminates under clause Q13 or Q14 the owner must pay the contractor as if it had wrongfully repudiated the contract.</p>	Q15	
<p>6. The contractor must submit a claim within a reasonable time to the owner for the amount in clause Q15.</p>	Q16	SW-42
<p>7. The architect must promptly assess the claim and promptly issue a payment certificate.</p>	Q17	
<p>8. The payment certificate takes the place of a final certificate and security must be released under clause C7.</p>	Q17 C7	
<p>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.</p>	Q18	
<p>10. The amount must be paid within the period shown in item 10 of schedule 1.</p>	Q18	
<p>11. If, after suspension of the works:</p> <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, <p>the contractor can make a time/cost claim.</p>	Q12	
<p>12. The requirements for making a time/cost claim and the procedures to be followed are stated in section H.</p>		

Termination of engagement – Section Q



Frustration (clause Q19)

Before a party decides to assert that the contract is frustrated, it should get 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, if 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 N11**.

Security must then be released in accordance with **clause C7** and payment must be made within the time shown in **item 10** of **schedule 1**.

Architect's forms

- SW-10** Architect's instruction
- SW-28** Notice – assessment of cost of completing the work
- SW-32** Certificate – termination payment
- SW-32H** Certificate – termination payment with deposit (domestic only)

Contractor's forms

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

Sections R & S – Miscellaneous and Definitions

Guidance

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

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

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

Sending documents to a party

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

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

For example, if a party has 5 working days to send a notice and it sends the notice by post, the notice must 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. In summary:

Method	Time to allow	If sent...	Received on:	Confirmation?
Post	3 working days	before 5pm	Day sent + 3 working days	Postal record or receipt
International Post	7 working days	before 5pm	Day sent + 7 working days	Postal record or receipt
Email	1 working day	before 5pm after 5pm	Day sent + 1 working day Day sent + 1 working day	Needed Sender should request
Email	1 working day	non-working day	Next working day	Sender should request

Change in relevant legislation

Clause R10 provides that if, after the parties sign the contract, any relevant legislation changes or new legislation comes into effect that requires changes to the works, the contractor must notify the architect promptly. The architect then must promptly instruct the contractor what to do. This may involve time and/or cost adjustments (see **Section L**).

List of Forms

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

Architect's forms

Form	Title	Clause
<i>Instructions</i>		
SW-10	Architect's instruction	
SW-11	Contract price adjustment	H4, K4, J4
SW-12	Architects instruction for a variation	J1.2
SW-13	Instruction – to proceed/not proceed with a variation	J3, J4
SW-14	Instruction – adjustment of time	L1.1, L2.1
SW-15	Instruction – to correct defects or finalise work	M11
SW-16	Instruction – request for contractor to submit final claim	N11.4
SW-16H	Instruction – request for owner to pay deposit (domestic only)	N16
<i>Notices</i>		
SW-20	Notice of practical completion	C6, D3, D4, M4, M13
SW-22	Notice of insurances	Section E, N7
SW-23	Notice – the works not at practical completion	M5
SW-26	Notice – entitlement to liquidated damages	M9
SW-27	Notice – application of liquidated damages	M9
SW-28	Notice – assessment of cost of completing the works	Q1, Q2, Q8
<i>Certificates</i>		
SW-30	Progress payment certificate	N4
SW-30H	Progress payment with deposit (domestic only)	N4, N16, N17
SW-31	Final certificate	N11
SW-32	Certificate – termination payment	N11
SW-32H	Certificate – termination payment with deposit (domestic only)	N11
SW-33	Certificate – release security	C6

List of Forms

Contractor's forms

Form	Title	Clause
SW-40	Request for information/instruction/notice	F5, G8.1, J1.3, M7.1, N8
SW-41	Notice of intention to claim	
SW-42	Details of claim	B2, E10, F7, G8, H2, J4, J8, L1, L2, M7, M8, N9, Q12, Q16
SW-43	Additional information	F5, H3.3, J4, L1, L2, M7, M11, N9, N11.1, Q12 together with H2
SW-44	Security – providing bank guarantees	C3
SW-44H	Security – providing bank guarantees and deposit	C3, N16
SW-45	Evidence of insurances – contractor to insure	Section E, N7
SW-46	Program	G5, G6
SW-47	Notice to architect – works at practical completion	M3, M6
SW-48	Progress claim – summary sheet	N3
SW-48H	Progress claim – summary sheet with deposit (domestic only)	N3, N16
SW-49	Final claim – summary sheet	N10
SW-51	Evidence of insurance – owner to insure	E5
SW-53	Notice of possession of the works before practical completion	M8
SW-55	Contractor's notice	A2.2, B1, E8, F5, G3.1, J2.3, J4.2, N8.1, Q11
SW-56	Notice of suspension/termination	Q12, Q13, Q14
SW-57A	Notice of dispute (acts done)	A8
SW-57B	Notice of dispute (failure to act)	A9
SW-58	Notice of dispute – clause P2	P2
SW-59	Notification of an official document	J6
SW-60	Notice of start or end of delay	L3
SW-61	Notice of non-compliance (of owner-specified materials)	A5.5