

## THE FOUR FIDIC 1999 CONTRACT CONDITIONS:

### CLAIMS & ADJUSTMENTS OF THE CONTRACT

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In the various Sub-Clauses, the Contractor's entitlements to claim are expressed using similar wording, typically as follows:

"If the Contractor suffers delay and/or incurs Cost .., the Contractor shall give notice... and shall be entitled subject to Sub-Clause 20. 1[.], to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8. 4[.], and
- (b) payment of any such Cost [plus reasonable profit], which shall be included in {EPCT which shall be added to} the Contract Price."

Note the following aspects of this typical wording:

- *"the Contractor shall give notice..."*: which is obligatory, but a failure to notify may be due to him not having suffered delay and not having incurred Cost.
- *"the Contractor ... shall be entitled ..."*: which is not stated as being subject to anyone's opinion.
- *"Subject to Sub-Clause 20.1 ..."*: the second and the final paragraphs of which may affect the Contractor's entitlements.
- *"An extension .... if completion is... delayed ..."*: so it should be calculated by reference to the delay in completion. Sub-Clause 10.1 (i) defines the extent of work to be completed within the Time for Completion, which must include the matters described in sub-paragraphs (a) and (b) of Sub-Clause 8.2 but may exclude minor outstanding work and defects which will not substantially affect use for the intended purpose, as permitted in Sub-Clause 10. 1 (a).
- *"Payment of any such Cost..."*: which is the Cost attributable to the event or circumstance, excluding Costs which are not attributable thereto.
- *"Plus reasonable profit ..."*: this phrase is included in Sub-Clause which relate to failure by (or on behalf of) the Employer, and not to other risks.

Sub-Clause	Contractor's Entitlement	Employer's Entitlement
1.9 CONS Delayed Drawings or Instructions	Contractor may claim extension of time, Cost and reasonable profit if Engineer fails to instruct within notified reasonable time	
1.9 P&DB Errors in the Employer's Requirements	Contractor may claim extension of time, Cost and reasonable profit for error in Employer's Requirements which was not previously discoverable	

<p><b>2.1</b> Right of Access to the Site*</p>	<p>Contractor may claim extension of time, Cost and reasonable profit if Employer fails to give right of access to Site within time stated in the Contract</p>	
<p><b>2.5</b> Employer's Claims*</p>		<p>Procedure with which Employer must comply when claiming payment from the Contractor and when claiming an extension to the Defects Notification Period</p>
<p><b>4.7</b> Setting Out</p>	<p>Contractor May claim extension of time, Cost and reasonable profit for errors in original setting-out points and levels of reference</p>	
<p><b>4.12</b> Unforeseeable Physical Conditions</p>	<p>Contractor may claim extension of time and Cost if he encounters physical conditions which are Unforeseeable</p>	
<p><b>4.19</b> Electricity, Water and Gas*</p>		<p>Employer entitled to payment if Contractor uses power, water or other services provided by the Employer, if any, without prior notice under Sub-Clause 2.5</p>
<p><b>4.20</b> Employer's Equipment and Free-Issue Material*</p>		<p>Employer entitled to payment if Contractor uses the Employer's Equipment, if any, without prior notice under Sub-Clause 2.5</p>

<b>4.24 Fossils*</b>	Contractor may claim extension of time and Cost attributable to an instruction to Contractor to deal with an encountered archeological finding	
<b>7.4 Testing*</b>	Contractor may claim extension of time, Cost and reasonable profit if testing is delayed by (or on behalf of) the Employer	
<b>7.5 Rejection*</b>		Employer may claim costs if defective Plant, Materials or workmanship is rejected and subsequently retested
<b>7.6 Remedial Work*</b>		Employer may claim costs if Contractor fails to carry out remedial work and if he would not have been entitled to be paid for it
<b>8.4 Extension of Time for Completion*</b>	Extension of Time for Contractor may claim extension of time if completion (see Sub-Clauses 8.2 & 10. 1) is or will be delayed by a listed cause	
<b>8.5 Delays Caused by Authorities*</b>	Contractor may claim extension of time if Country's public authority causes Unforeseeable delay	
<b>8.6 Rate of Progress*</b>		Employer may claim costs attributable to revised methods which Contractor adopts in order to overcome a delay for which no extension of time is due

<b>8.7 Delay Damages*</b>		Employer may claim prescribed delay damages if Contractor fails to achieve completion within Time for Completion
<b>8.9 Consequences of Suspension*</b>	Contractor may claim extension of time and Cost if Engineer instructs a suspension of progress	
<b>9.4 Failure to Pass Tests on Completion*</b>		Employer may claim costs if Works or Section repeatedly fails Test on Completion
<b>10.2 Taking Over of Parts of the Works</b>	Contractor may claim Cost and reasonable profit attributable to the taking over of a part of the Work	Employer's entitlement to prescribed delay damages is reduced by a proportion related to the contract value of the part taken over
<b>10.3 Interference with tests of Completion*</b>	Contractor may claim extension of time, Cost and reasonable profit if Employer delays a Test on Completion	
<b>11.3 Extension of Defects Notification Period*</b>		Employer may claim extension of the Defects Notification Period if Works or Section or major Plant cannot be used for intended purpose because of any defect
<b>11.4 Failure to Remedy Defects*</b>		Employer may claim costs if Contractor fails to remedy a defect for which Contractor is responsible

<b>11.8 Contractor to Search*</b>	Contractor may claim Cost and reasonable profit if instructed to search for cause of a defect for which he is not responsible	
<b>12.2 P&amp;DB Delayed Tests*</b>	Contractor may claim Cost and reasonable profit if Employer delays a Test after Completion	
<b>12.3 CONS Evaluation</b>	Engineer evaluates each item of work, applying measurement and appropriate rate or price	
<b>12.3 P&amp;DB Retesting*</b>		Employer may claim costs attributable to repeated failures of Test after Completion
<b>12.4 CONS Omissions</b>	Contractor may claim a Cost which, although it had been included in a BoQ item, he would not recover because the item was for work which has been omitted by Variation	
<b>12.4 P&amp;DB Failure to Pass Tests after Completion*</b>	Contractor may claim Cost and reasonable profit if Employer delays access to the Works or Plant	Employer may claim prescribed non-performance damages in event of failure to pass Test after Completion
<b>13.2 CONS Value Engineering</b>	Contractor may claim half of the saving in contract value of his redesigned post-contract alternative proposal, which was approved without prior agreement of such contract value and of how saving would be shared	
<b>13.3 Variation Procedure*</b>	The Contract Price shall be adjusted as a result of Variations	
<b>13.7 Adjustments for changes in Legislation*</b>	Contractor may claim extension of time and Cost attributable to a change in the Laws of the Country	Employer may claim payment of reduction in Contractor's Cost attributable to a change in the Laws of the Country

<b>14.4</b> Schedule of Payments*	If interim payment installments were not defined by reference to actual progress and actual progress is less than that on which the schedule of payments was originally based, these installments may be revised	
<b>14.8</b> Delayed Payment*	Contractor may claim financing charges if he does not receive payment in accordance with Sub-Clause 14.7	
<b>15.3</b> Valuation at Date of Termination*		Works, Goods and Contractor's Documents are valued after Employer has terminated Contract
<b>15.4</b> Payment after Termination*		Employer may claim losses and damages after terminating Contract
<b>16.1</b> Contractor's Entitlement to Suspend Work*	Contractor may claim extension of time, Cost and reasonable profit if Engineer fails to certify or if Employer fails to pay amount certified or fails to evidence his financial arrangements, and Contractor suspends work	
<b>16.4</b> Payment on Termination*	Contractor may claim losses and damages after terminating Contract	
<b>17.1</b> Indemnities*	Contractor may claim cost attributable to a matter against which he is indemnified by Employer	Employer may claim cost attributable to a matter against which he is indemnified by Contractor
<b>17.4</b> Consequences of Employer's Risks*	Contractor may claim extension of time, Cost and (in some cases) reasonable profit if Works, Goods or Contractor's Documents are damaged by an Employer's risk as listed in Sub-Clause 17.3	

<b>18.1</b> General Requirements for Insurances*	Contractor may claim cost of premiums if Employer fails to effect insurance for which he is the "Insuring Party"	Employer may claim cost of premiums if Contractor fails to effect insurance for which he is the "Insuring Party"
<b>18.2</b> Insurance for Works and Contractor's Equipment (last paragraph)*		Employer may claim payment of reduction in cost of premiums if the Contractor's insurance of an Employer's risk becomes unavailable at commercially reasonable terms
<b>19.4</b> Consequences of Force Majeure*	Contractor may claim extension of time and (in some cases) Cost if Force Majeure prevents him from performing obligations	
<b>19.6</b> Optional Payment, Termination and Release*	Contractor work and other Costs are valued after progress is prevented by a prolonged period of Force Majeure and either Party then gives notice of termination.	
<b>20.1</b> Contractor's Claim*	Procedure with which the Contractor must comply when claiming an extension of time and/or additional payment.	

Sub-Clauses marked are those relevant to EPCT 3.5, although their details may differ from those in the provisions relevant to CONS/P&DB 3.5