



CONSTRUCTION
LAW
INSTITUTE

EMPLOYERS CLAIMS

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01.

LIQUIDATED DAMAGES (LD's)

- Liquidated Damages(LDs) – A fixed sum usually per week or perday writtten into the contract in the event that works are not completed by the contract completion date (original or extended)
- LD's avoid the difficulty of proving and assesing actual loss where delay occurs and Liquidated damages may apply to sectional handover
- LD's applied if works not taken over by the employer by the time for completion and extentions of time (if any)
- Employer to issue relevant notices
- LD's should not be extravagant unconcionable and therefore uneforceable at law (Penalty)
- Condition precedent as it relates to LD's.



TIME AT LARGE

- If completion takes place after the agreed date for completion then the contractor is liable for liquidated damages unless Time is “at large” because of a delay caused by the employer and there remains some period of culpable delay
- There may also be circumstances which arise rendering a completion period fixed by the contract as no longer operable, again rendering time at large e.g. where a delay is caused by the employer and the terms of the contract make no provision for extending the completion date due to delays by the employer.
- Time may also be considered “at large” where the contractor submits a valid extension of time claim, but this is either not responded to, or an extension of time is not awarded and the contractor completes later than the contractual completion date

TERMINATION



- Contract termination is when one party to a contract wishes to end the contract before the other party can fulfil the agreement
- Occurs where there is default or breach by either Party of their obligations in the Contract
- Both the Employer and the Contractor may terminate the Contract.
- Clause 15 sets out the procedure for Employer termination and
- Clause 16 sets out the procedure for Contractor termination
- The Employer may also terminate under Sub-Clause 11.4 [Failure to Remedy Defects], and both Parties may terminate under Sub-Clause 19.6 [Optional Termination, Payment and Release]
- Care must be taken not to issue termination notices prematurely as they may amount to repudiatory breaches or material breaches under law.

A photograph of two workers in safety gear (hard hats and high-visibility vests) standing in a field of wind turbines at sunset. The worker on the left is wearing a blue hard hat and a green high-visibility vest, and is pointing towards the turbines. The worker on the right is wearing a white hard hat and an orange high-visibility vest. The background shows several wind turbines against a warm, orange and yellow sky. The text "TERMINATION BY EMPLOYER – WHY?" is overlaid in white, bold, sans-serif font on the lower left side of the image.

TERMINATION BY EMPLOYER – WHY?

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TERMINATION BY EMPLOYER – WHY?

- Contractor fails to submit the contractually required performance security/letters of guarantee;
- Contractor fails to comply with a contractual notice to correct;
- Contractor abandons the Works or demonstrates the intention not to continue performance of his obligations under the Contract;
- Contractor fails to proceed with the Works without reasonable excuse
- Contractor fails to remedy any defects in the Works without reasonable excuse;



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TERMINATION BY EMPLOYER – WHY?

- Contractor subcontracts the whole Works or assigns the Contract without the Employer's agreement;
- Contractor becomes bankrupt or insolvent; or
- Contractor Bribery in relation to the Contract
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EMPLOYER'S TERMINATION FOR CONVENIENCE – SC 15.5

- The Employer may terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor.
- The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. T
- Employer shall not terminate the Contract for convenience in order to execute the Works himself or to arrange for the Works to be executed by another contractor.
- After this termination, the Contractor shall proceed in accordance with Sub-clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-clause 19.6 [Optional Termination, Payment and Release].”



EMPLOYER'S TERMINATION FOR CONVENIENCE – SC 15.5

- The Costs compensable to the contractor as a consequence of the employers termination for convenience are intended to restore the Contractor to the financial position it would have been in had the project never commenced (i.e. no allowance for profit).
- It follows that the Employer is not entitled to terminate the Contract in order to complete the Works himself or by engaging a new (and potentially cheaper) Contractor.

OPTIONAL TERMINATION, PAYMENT AND RELEASE [FORCE MAJEURE]

- If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub- Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract.
- In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub- Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment]





TERMINATION BY CONTRACTOR - WHY?

01. TERMINATION BY CONTRACTOR – WHY?

- The Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 in respect of a failure to comply with Sub-Clause 2.4 [Employers Financial Arrangements]
- The Engineer fails within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate
- The Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims])



02.

TERMINATION BY CONTRACTOR – WHY?

- The Employer substantially fails to perform his obligations under the Contract.
- The Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment].
- The Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws)has a similar effect to any of these acts or events.



TERMINATION BY CONTRACTOR – EMPLOYER'S OBLIGATIONS



TERMINATION BY CONTRACTOR – EMPLOYER’S OBLIGATIONS

- If the Contractor terminates under Sub-Clause 16.2 [Termination by Contractor], the Employer is required to promptly:
 1. return the Performance Security to the Contractor,
 2. pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
 3. pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.”



TERMINATION BY CONTRACTOR – EMPLOYER’S OBLIGATIONS

- Sub-Clause 16.2 deals with the Termination by the Contractor. There are seven grounds specified.
- In most cases the Contractor may give 14 days’ notice if it intends to terminate the contract;
- However, the Contractor may by notice terminate immediately. where there has been a prolonged suspension under Sub-Clause 8.11 [Prolonged Suspension] or, bankruptcy, liquidation, insolvency or receiving or administration orders have been made against the Employer



TERMINATION BY CONTRACTOR VS OPTIONAL TERMINATION

- Under Sub-Clause 16.3(b) the Contractor will have handed over only the items for which he has received payment. However under Sub-Clause 19.6(a) he is entitled to be paid for work done and under Sub-Clause 19.6(b) to be paid for Plant and Materials ordered for the Works.
- He is then required to hand over anything paid for by the Employer. Thus it is possible that the Contractor will, under Sub-Clause 16.3 be required to take away certain Plant and Materials, but under Sub-Clause 19.3, be entitled to be paid for them and required to return them.
- Employers should therefore not assume that because the Contractor has removed any Goods from the Site – as required under Sub-Clause 16.3, they will not be obliged to pay for them



TERMINATION BY CONTRACTOR VS OPTIONAL TERMINATION

- Sub-Clause 16.4 (c) requires the Employer to pay loss of profit or other loss or damage sustained by the Contractor as a result of this termination.
- This contrasts with a termination under Sub-Clauses 15.5 and 19.6 under which only cost is paid.
- From an Employer's point of view a termination under Sub-Clause 15.5 (which is always the Employer's right) or Clause 19.6 (which is possible though unlikely) or Sub-Clause 15.2 will be preferable to a Contractor's termination under Clause 16.2.



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