



Basic Guide

General Conditions of Contract for Construction Works (GCC 2004)

February 2008

Preface

The Construction Industry Development Board (CIDB) is a national body established by an Act of Parliament (Act 38 of 2000).

The CIDB develops the industry for the improved delivery of infrastructure to the South African public. It works with all stakeholders for the sustainable growth of construction enterprises and the best practice of employers, contractors and the professions.

The CIDB identifies best practice and sets national standards. It promotes common and ethical standards for construction delivery and contracts.

To implement these objectives, the CIDB is mandated to establish:

- a Code of Conduct for all role players in the construction process;
- a Standard for Uniformity in Construction Procurement
- a national Register of Projects; and
- a national Register of Contractors.

The CIDB Standard for Uniformity in Construction Procurement requires that Employers contract for construction works using one of the standard forms of contract that are listed in this standard, namely:

- General Conditions of Contract for Construction Works;
- Conditions of Contract for Construction, Conditions of Contract for Plant and Design-Build, Conditions of Contract for FIDIC EPC/Turnkey Projects or Short Form of Contract;
- JBCC series 2000 Principal Building Agreement or Minor Works Agreement; or
- NEC3 Engineering and Construction Short Contract or NEC3 Engineering and Construction Contract.

The CIDB has published the booklet *The 3Rs Basic Guide for SME's "Know your Rights, Responsibilities and Risks!"* to enable SMMEs to:

- to gain some understanding of and insights into a number of basic contractual issues and contracting process;
- be aware of all the stages of the process; and
- highlights some of the most common problems which can confront contractors who do not understand how a contract works.

This publication did not go into the detail of any of the standard forms of contract referred to in the CIDB Standard for Uniformity in Construction Procurement.

This **Basic Guide**, which forms part of a series of guides, outlines the key provisions of the General Conditions of Contract for Construction Works published by the South African Institution of Civil Engineering, which is commonly referred to as GCC 2004. It also provides some insights into the administrative procedures and processes associated with this standard form of contract.

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1 An overview of GCC 2004

1.1 Structure and content

The General Conditions of Contract for Construction Works, which is commonly referred to as GCC 2004, contains 58 clauses that establish the general risks, liabilities and obligations of the contracting parties and the administrative procedures for the administration of the contract i.e. the general conditions of contract. These clauses deal with the following topics:

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CONTRACT DATA

The General Conditions of Contract for Construction Works (2004) published by the South African Institution of Civil Engineering, are applicable to this contract.

Copies of these conditions of contract may be obtained from the South African Institution of Civil Engineering (tel 011-805 5947)

Part 1: Contract Data provided by the Employer

Part 2: Contract Data provided by the Contractors

The terminology used in GCC 2004 is consistent with that of the CIDB's Standard for Uniformity in Construction Procurement.

The general conditions of contract contained in GCC 2004 need to be made contract specific through the contract data.

It should be noted that:

- the Form of Offer and Acceptance contains the Contractor's offer, the Employer's acceptance and any agreed amendments or

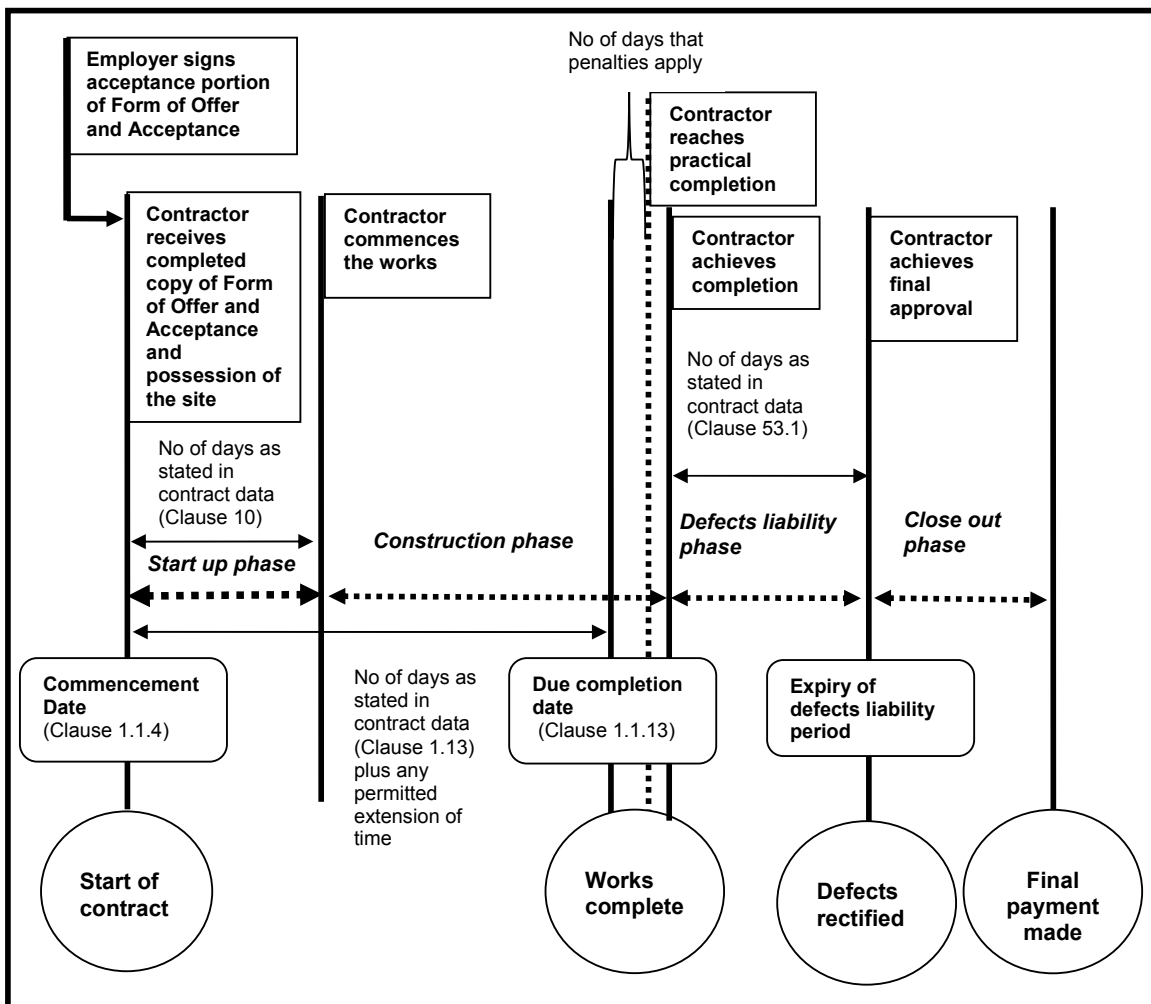
- charges to the tender document upon which the Contractor based his tender;
- the Pricing Data contains the agreed prices which will be used in assessing payments due for work completed;
- the Scope of Work (which may include the specifications and drawings) establishes what the Contractor is to construct, what quality is required and how the Contractor is to manage and construct the works;
- the Site Information describes the site as at the time of tender and should the actual conditions on site turn out to be different to those described, then the Contractor would have a claim for compensation or extension of time.

1.2 The Engineer

GCC 2004 requires the Employer to appoint an “Engineer” to administer the contract as an agent of the Employer in accordance with the provisions of the contract. The *Contract Data* indicates the areas where specific Employer approvals are required. Whenever the engineer exercises any discretion or makes or issues any ruling, contract interpretation or price determination, he is required to first consult with the Contractor and the Employer in an attempt to reach agreement. Failing agreement, the engineer is required to make a fair decision in accordance with the contract taking into account all relevant facts and circumstances.

1.3 Construction process and procedures

GCC 2004 is framed around the processes and procedures which commence with the signing of the Form of Offer and Acceptance and conclude with the Employer making a final payment to the Contractor as illustrated below:



The Contractor must achieve Practical Completion by not later than the Due Completion Date, otherwise he will be liable to pay penalties to the Employer. The amount of penalties to be paid by the Contractor for each day that he is late is stated in the Contract Data. The number of days the Contractor is late is the difference between the date that the Certificate of Practical Completion is issued and the Due Completion Date. This number of days multiplied by the penalty per day gives the total amount for which the Contractor is liable.

Penalties are like a fine payable to the Employer in the event that the construction works are not completed on time.

Penalties are governed by the Penalties Act of 1962 which requires that the penalties must be proportionate to the prejudice suffered by the employer. A Court of Law may reduce any penalty which is considered excessive.

Even where penalties are applied against the Contractor, he has a duty to finish the work and to carry out all his other duties under the Contract.

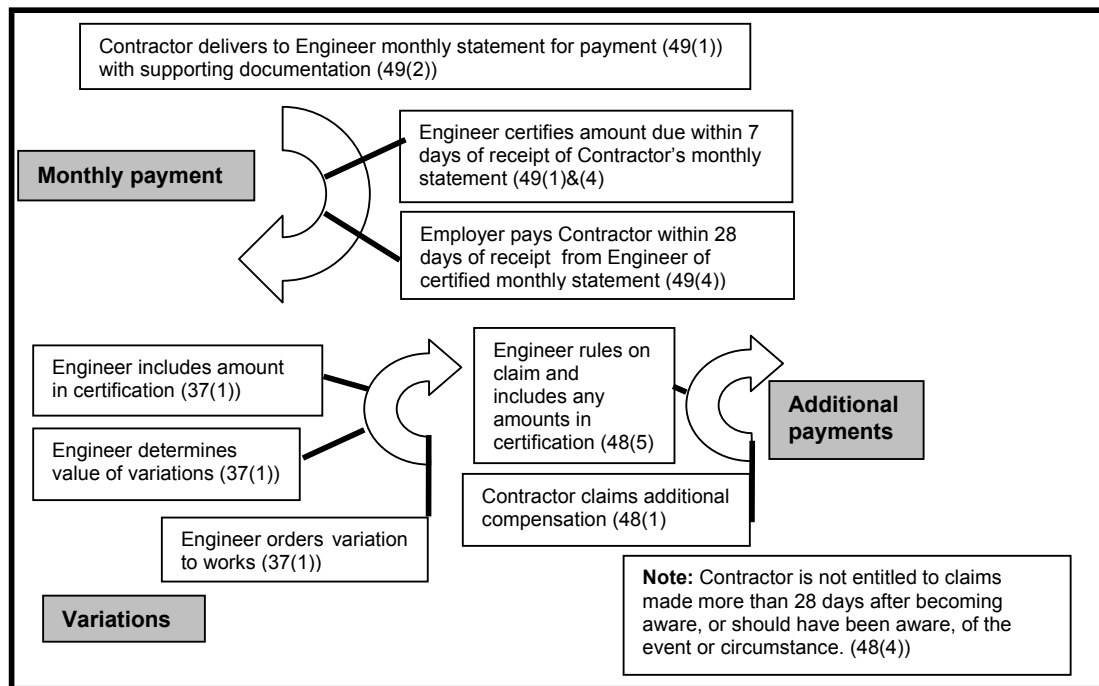
Penalties are reduced by the Engineer where, although the whole of the Works is not practically complete:

- a Certificate of Practical Completion has been issued for part of the Works; or where
- the Employer has taken occupation or used part of the Works.

1.4 Payment provisions

GCC makes provision for monthly payment to Contractors based on an estimate of the value of the works (both permanent and temporary) that have been completed, a percentage of the materials on site, any additional payments that are due and any price escalation that may be provided in the contract.

The processes associated with the monthly payment, the valuation of the variations to the contract ordered by the Engineer and the claims made by the Contractor for additional payment are as set out below:



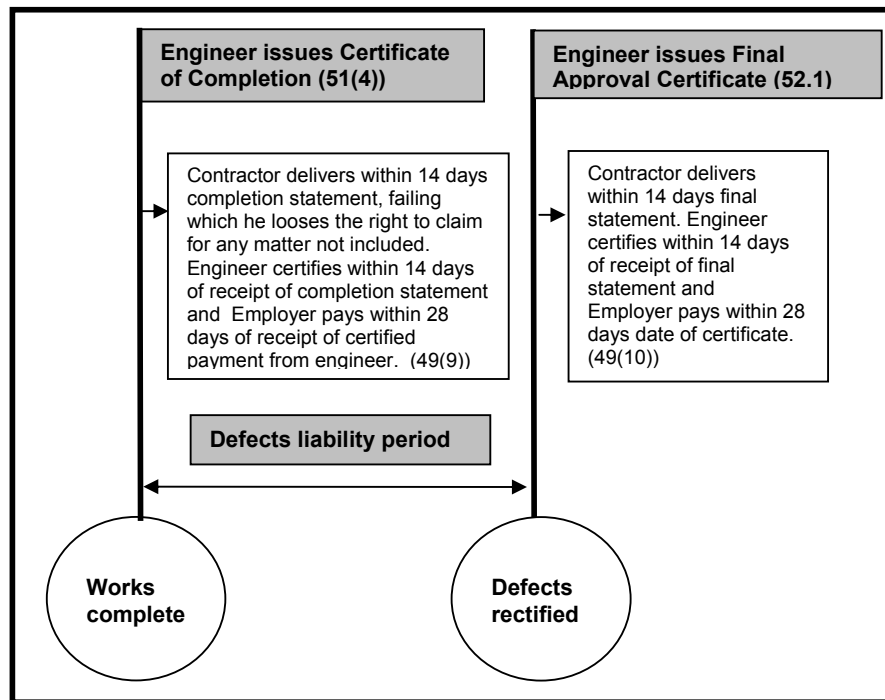
Penalties are usually deducted in interim payment certificates, from money due to the Contractor.

Retention is money which has been earned by the Contractor for work done, but which is not paid out at the time the Interim Payment Certificate is issued. Retention money is held by the Employer to ensure that the Contractor does his work properly. Sometimes, an Employer will accept a "Retention Guarantee" instead of deducting retention money. If this is the case, it will be stated in the Contract Data.

Retention monies are deducted from payment certificates up to a limit stated in the Contract Data. The amount of retention to be deducted in each Interim Payment Certificate up to the limit is stated in the Contract Data.

Half of the retention money is paid to the Contractor when the Engineer issues the Certificate of Completion when the contractor has completed the works. The other half is paid within 14 days after the end of the Defects Liability Period.

GCC requires the Contractor to submit a completion statement when he has completed the works and a final statement at the end of the defects liability period, as set out below:



Payments due to a contractor in terms of GCC 2004 are as follows:

Period	Payment where no retention guarantee is provided
From commencement date to up to the issue of the Practical Completion Certificate	Value of work certified each month plus a percentage of materials on site less the applicable retention monies and any penalties
After issue of the Completion Certificate	Value of work certified less previous payments less 50 % of the applicable retention monies
After issue of Final Completion Certificate	Payment of any amounts outstanding and remaining 50% of applicable retention monies.

1.5 Disputes

There are 3 types of dispute which may arise:

- 1) Events or matters stipulated in the contract that the Contractor must claim under Clause 48.

- 2) Disagreements between the Contractor and the Engineer which do not arise from a claim by the Contractor under clause 48 [Clause 57]

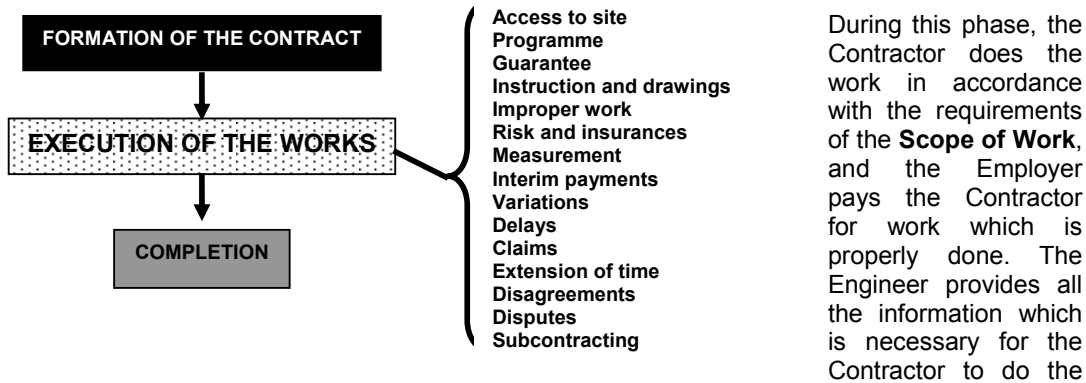
In both these cases the Engineer must first consult with the Contractor and Employer in an attempt to reach agreement. Failing agreement between the parties, the Engineer gives his ruling in accordance with the contract taking into account the relevant facts and circumstances. (Clauses 48.5 or 57.2)

Within 28 days of the Engineer giving his ruling the Contractor or the Employer may dispute the ruling in which case the dispute will be subjected to either mediation or adjudication depending on what is stated in the Contract Data. If the dispute is still not resolved after mediation or adjudication, either arbitration or court proceedings, depending what is stated in the Contract Data, will bring finality to the dispute. (Clause 58)

- 3) Disputes between the Contractor and the Employer which have nothing to do with any decision of the Engineer, or which arise after the Contract is complete [Clause 58.7]

This type of dispute is dealt with in Clause 58.7, either by **arbitration proceedings (Clause 58.4)** or by **court proceedings**, depending on what is stated in the Contract Data..

2 Execution of the works



work. If the Engineer is satisfied with the work done, he issues an Interim Payment Certificate, usually every month, for that work, and the Employer pays the amount certified by the Engineer.

Access to site (Clause 11)

The Contractor cannot do the work he has to do if he is not given access to site.

Also, if access is given late, there is a danger that the Contractor will not finish by the Due Completion Date, and he will then be liable for penalties. The Employer must give the Contractor sufficient access to the site by the Commencement Date stated in the Contract.

If the Employer does not give sufficient access by the Commencement Date, and the Contractor will be delayed or will suffer additional costs, he may claim in terms of Clause 48

Programme (Clause 12)

The Contractor must prepare a programme which shows when each part of work is to be done, so that all the work will be finished by the Due Completion Date.

This programme has to be given to the Engineer soon after the Commencement Date, not later than the number of days stated in the Contract Data.

The Engineer uses this programme to check that the Contractor is finishing each part of the work when he planned to do so.

If the Contractor does not keep up with the programme, the Engineer may instruct him to work overtime, or employ more labour or equipment, to make sure that all the work is completed by the Due Completion Date. The Contractor will not be paid extra for this, as he is falling behind his own programme.

However, if there are delays which are not his fault, the Contractor can claim an extension of time, in terms of Clause 42, which will make the Due Completion Date later and protect the Contractor from penalties for those delays.


Guarantee (Clause 7)

The Contractor must give a Guarantee to the Employer that the Contract will be properly executed by the Contractor. Clause 7 provides for this.

The Guarantee must be from a Bank or Insurance Company which is approved by the Employer.

The value of the Guarantee as well as when it must be given to the Employer is stated in the Contract Data.

The Engineer may refuse to issue a Payment Certificate for work done by the Contractor until the Contractor has provided the Guarantee.



**Instructions and drawings
(Clause 13)**

These are specifications, drawings, instructions and other items of information that are issued by the Engineer to inform the Contractor what work he has to do.

Without this, the Contractor cannot do the work he has undertaken to do.

The Contractor does not always receive all the instructions and drawings he needs for the whole Contract at the Commencement Date. This is usually not a problem, as long as he has enough information to start and continue with his work. However, if information is provided so late that the Contractor cannot keep to his programme, he will be delayed. If this happens, the Contractor may claim for additional costs and for an extension of time, as the delay is not his fault, provided he warns the Engineer that he will be delayed if the information is not received by a certain date. Clause 13 provides for this.

NB Oral instructions must be confirmed in writing within 14 days (see Clause 36.2)

**Improper work
(Clauses 25 and 26)**

The Engineer can order the Contractor to remove and redo any work which has not been properly done according to the specifications, drawings and instructions. Clause 26 provides for this.

If this happens, the Contractor must obey the order, and will receive no payment for doing so.

If the Contractor does not obey the order, the Employer may employ someone else to do as the Engineer has ordered, and the Contractor will be responsible to pay the costs of that other person.

Where any work is to be covered up, for example, foundations which are to be backfilled, the Contractor must notify the Engineer to inspect the work before it is covered up. Clause 25 provides for this.

If the Contractor does not notify the Engineer before covering up work, the Engineer may order the Contractor to open it up again to check that it has been properly done, and the Contractor will not be paid for doing so.

**Risk and insurances
(Clauses 32 to 35)**

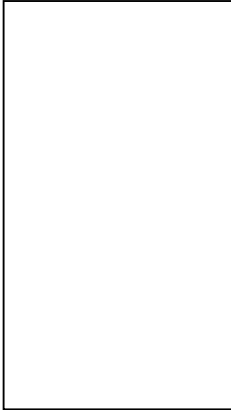
Risk and insurance are different.

- When the Contractor takes over the site, he must take care of it and is responsible for any loss or damage on the site, including materials brought onto site for the work to be done. This is a risk.
- The only exceptions to this risk are events listed in Clause 32, which are at the risk of the Employer.
- Insurance is taken out to compensate for any loss or damage.
- Unless it is stated in the Contract Data that the Employer will take out the insurance, the Contractor must take out the insurance.
- It does not matter who takes out insurance, the Contractor is still responsible for any loss or damage to the site and the materials on site.
- This means that, if the insurance is not enough to compensate for the loss or damage, the Contractor will have to pay for the loss or damage not covered.
- It is therefore important the Contractor takes out enough insurance, if it is his duty to do so, or to check that the Employer has taken out enough insurance, if it is the Employer's duty to do so.

Risk is the chance of something happening that will have an impact upon the outcomes of the contract. Risk cannot be eradicated, but can be managed. Most physical risks can be insured against. **Insurance** is not a substitute for effective risk management. Insurance is only intended to deal with measurable or known risks and serves to spread the impact of loss. It cannot deal with uncertainty itself and cannot prevent loss.

WHAT IS MEANT BY "MEASUREMENT"?

**Measurement
(Clause 44)**



Although quantities are given in the Bill of Quantities they are not always the actual quantities representing the work to be done. For this reason, and because the Engineer has to estimate each month how much work has been done, so that the Contractor can be paid, the *actual* work done has to be measured.

WHO IS RESPONSIBLE FOR THE MEASUREMENT?

The Engineer is responsible to value the work, but if he asks the Contractor to take measurements of the work done during the month and to estimate the quantity of materials on site, the Contractor must do so.

WHEN THE CONTRACTOR IS INSTRUCTED TO MEASURE

- The Contractor must give details of his measurement to the Engineer in a “supporting statement”, together with his normal monthly claim for payment.
- If the Contractor does not obey the instruction or does not submit the “supporting statement”, the Engineer will decide what the Contractor will be paid for work done during that month, without consulting the Contractor.

WHEN THE ENGINEER DECIDES TO MEASURE, OR TO BE PRESENT WHEN THE CONTRACTOR MEASURES

- The Engineer must inform the Contractor in writing of this, giving a time when and place where measurement will take place.
- The Contractor must then be present to observe the Engineer taking measurements, or to take the measurements himself in the presence of the Engineer.

If the Contractor fails to do so, the Engineer will decide what the Contractor will be paid for work done during that month, without consulting the Contractor.

**Interim
payments
(Clause 49)**

THE CONTRACTOR’S MONTHLY STATEMENT

The Contractor must issue each month a statement to the Engineer claiming

- The value of the work done up to the date of the statement
- The cost of materials on site not yet built in (see clause 29)
- Any adjustment to the Contract Price (see clause 46); and
- Any dayworks done (see clause 37.2)

Two copies of invoices must also be submitted for any materials claimed.

THE ENGINEER’S INTERIM PAYMENT CERTIFICATE

The Engineer evaluates the Contractor’s statement, and checks that all amounts claimed are due to the Contractor. When the Engineer is satisfied that the statement is correct, he deducts the following

- All previous payments made;
- Any penalties imposed;
- Any retention money (unless there is a Retention Guarantee)

This becomes the Engineer’s Interim Payment Certificate, which the Engineer submits to the Employer, with a copy to the Contractor, within 7 days of receiving the Contractor’s statement.

PAYMENT BY THE EMPLOYER

The Employer must pay to the Contractor the amount certified by the Engineer in the Interim Payment Certificate within 28 days of receiving the Certificate. However, if the Contractor owes the Employer money, the Employer may deduct the money owed from the amount in the Interim Payment Certificate, before paying the Contractor. Where the Employer does deduct money owed, he must give reasons to the Contractor for doing so.

WHEN THE EMPLOYER DOES NOT PAY THE CONTRACTOR

If the Employer does not pay the Contractor within the 28 days, he must pay the Contractor interest, on the prime overdraft rate, until the Contractor is paid.

**Variations
(Clauses 36 and
37)**

WHAT IS A VARIATION?

A variation (alteration to the nature or extent of construction works, or the conditions under which they will be carried out) is ordered by the Engineer when he wants to:

- Add to or reduce the work
- Change the nature of the work, or
- Change the way the work is done.

The Engineer may not order a variation after the Certificate of Completion is given. The Variation Order must be given in writing.

Variation Orders usually mean additional payment for the Contractor.

PAYMENT FOR VARIATION ORDERS

The Engineer will value the variation by:

- Using the rates or prices in the Bill of Quantities, if possible, or
- If not, using rates or prices which are based on those in the Bill of Quantities.
- If that is not possible, then the Engineer and the Contractor must agree the rates or prices, or the Engineer may decide that Dayworks is to apply.

WHEN THE VARIATION ORDER IS NOT IN WRITING

- The Contractor must still follow the order
- The Contractor must write to the Engineer, within 14 days, confirming that the order is a Variation Order, and, unless the Engineer denies that the order is a Variation Order within 14 days, the order will be taken to be a Variation Order, and the Contractor will be paid.

WHEN THE VARIATION IS TO BE DONE BY DAYWORKS

- The rates or prices listed in the Daywork Schedule in the Pricing Data are to be used
- Where there is no Daywork Schedule, the rates and prices will be based on
 - the actual cost of labour and materials used, with an allowance from the Contract Data for all other charges and profit
 - Agreed rates for Construction Equipment, or if not agreed, rates decided by the Engineer, based on external plant hire rates.
- Where actual cost of material is to be used, the Engineer may wish to first approve the cost and ask for quotations, and may require proof of the actual amounts paid by the Contractor.

THE PROCEDURE FOR PAYMENT FOR DAYWORKS

Each day, the Contractor must provide a list in triplicate to the Engineer or Engineer's Representative, giving details of:

- Each workman employed for the dayworks and the time spent;
- The type and amount of material used;
- The type of Construction Equipment used and the time it was used.

If the Engineer or Engineer's Representative agrees with the details, he will sign the list, which must be included in the Contractor's monthly statement for payment.

Delays

TYPES OF DELAYS

There are 2 types of delay which may occur on site:

- Delays which are the fault of the Contractor, in which case the Contractor will incur penalties in accordance with Clause 43 in the event that Contract is not completed by the Due Completion Date.
- Delays, which are **not** the fault of the Contractor, which prevent him from completing on time, in which case the Contractor may claim for “an extension of time” to make the Due Completion Date later so that he will not incur penalties.

CAUSES OF DELAYS WHICH ARE NOT THE FAULT OF THE CONTRACTOR

Delays which are not the fault of the Contractor include:

- Compliance with the Engineer’s instructions arising from an ambiguity or discrepancy between documents (see Clause 3.2).
- Failure by the Employer to give possession of the site in accordance with the provisions of the contract (see Clause 11.2)
- Failure by the Engineer to timeously comply with the Contractor’s request to provide additional information required for the execution of the works (see Clause 13.6)
- Compliance with the Engineer’s instructions for dealing with fossils, coins, articles of antiquity and structures and other remains of things of geological or archaeological interest discovered on the site (see Clause 15.1)
- The provision by the Contractor of facilities for others not provided for in the contract. (see Clause 18.2)
- Failure by the Engineer to examine the works within a reasonable period after being given notice by the Contractor to do so. (see Clause 25.2)
- The uncovering or making openings in or through parts of the work when ordered by the Engineer after such work has been covered up after being examined by the Engineer and found to be in compliance with the requirements of the contract. (see Clause 25.3)
- The ordering of the suspension of the works by the Engineer which is unrelated to the proper execution of the contract, for reasons of weather conditions, default of breach of the contract by the Contractor, the safety of the works, or the safety of the public. (see Clause 39.2).
- Non-compliance with the terms of the contract by the Employer, his agents, employees or other contractors. (see Clause 41).
- Adverse physical conditions which an experienced contractor could not have reasonably foreseen at the time of submitting a tender.(see Clause 47)
- Outbreaks of war, armed hostilities or the imposition of economic sanctions and the contract is not cancelled. (see Clause 54.4)

DELAYS CAUSED BY THE EMPLOYER (Clause 41)

The Contractor must give a notice in writing to the Engineer, stating what is causing the delay, and demanding that the problem be solved by a certain date. The date stated must give a reasonable time to solve the problem.

Extension of time

WHAT IS AN EXTENSION OF TIME?

The Contractor must be practically complete by the Due Completion Date – if he is not, penalties may be imposed for each day he is late.

When a Contractor is delayed by events which are not caused by him and which would prevent him from completing the work in time, he may apply for the Due Completion Date to be extended by the amount that he is delayed, so that he will not be liable for penalties. When the Engineer does extend the Due Completion Date as requested by the Contractor it is said that the Contractor has been given an “extension of time”.

Because the Contractor will be on site for a longer period when an extension of time is granted, some of his costs will increase i.e. the time related general items The Contract makes allowance for additional payment in such circumstances, under Clause 42.4.

CIRCUMSTANCES WHICH GIVE RISE TO CLAIMS FOR EXTENSION OF TIME (Clause 42)

Delays which fairly entitle a Contractor to make a claim for extension of time include:

- the amount and nature of additional work;
- abnormal climatic conditions;
- any failure of delay on the part of the Employer or his agents, employees or other contractors in their obligations as are reasonably necessary for the works to proceed;
- any of the provisions which allow for an extension of time (i.e. clauses 3.2, 11.2, 13.6, 15.1, 18.2, 25.3, 39.2, 41, 47 and 54.4);
- any disruption of labour which is entirely beyond the contractor's control.

The Contractor is paid the additional time related General Items in the Pricing Data should an extension of time be granted.

HOW DOES A CONTRACTOR CLAIM FOR AN EXTENSION OF TIME?

The Contractor must follow the procedure set out in Clause 48 – Claims procedure. He must claim not only for the amount of time that the Due Completion Date is to be extended, but also for any costs which will increase due to him staying longer on site (called “time-related General Items”).

Examples of events where an extension of time may be granted

- The Engineer increases the amount of work to be done, or the nature of the work to be done changes
- The climatic conditions are abnormal
- The Contractor is not given access to the site
- Drawings are given late
- Changes are made to drawings
- Strikes which the Contractor cannot control
- The Employer or Engineer suspends work
- Other contractors employed by the Employer cause the Contractor to be delayed.

**Claims
(Clause 48)**

CLAIMS

The Contractor must use the procedure of Clause 48 for claims in respect of the following events:

- Ambiguity (Clause 3.2)
- Possession (Clause 11.2)
- Engineer's delays (Clause 13.6)
- Fossils (Clause 15)
- Providing facilities (Clause 18.2)
- Engineer's attendance (Clause 25.2)
- Uncovering (Clause 25.3)
- Suspension (Clause 39.1)
- Employer's delays (Clause 41.1)
- Extension of time (Clause 42.2)
- Adverse physical conditions (Clause 47.4)
- War, state of emergency, etc. (Clause 54.4)

The Contractor may claim for additional costs only or for an extension of time and additional costs arising from the extension of time.

NOTIFICATION BY THE CONTRACTOR

When the Contractor has a claim, he must notify the Engineer in writing, within 28 days of the cause arising, that he has a claim and must state:

- that he is claiming under clause 48;
- what is the cause of the claim;
- which clause gives him the right to claim;
- if claiming an extension of time, how much is claimed and how this is calculated; and
- what additional payment is claimed and how this is calculated.

WHEN ALL THE DETAILS OF THE CLAIM CANNOT BE GIVEN IN 28 DAYS

The Contractor must:

- notify the Engineer that he intends to claim;
- give as much detail as he can; and
- give all the outstanding detail as soon as he can.

When the cause of the claim is continuing, the Contractor must give updated particulars to the Engineer each month, and final details within 28 days after the cause of the claim has ended.

RECORDING OF FACTS

The Contractor must record all the facts on which his claim is based when they occur so that they can be investigated. This must be done to the approval of the Engineer, and the records must be given to the Engineer without delay.

A list must be made of which records are agreed between the Contractor and the Engineer and which are not agreed, and the list must be signed by both the Contractor and the Engineer.

THE ENGINEER'S RULING

Before giving his ruling the Engineer must first consult with the Contractor and Employer in an attempt to reach agreement. Failing agreement between the parties, the Engineer must give a ruling on the Contractor's claim within 28 days of receiving the claim. Where the Engineer rules that the Contractor is to receive additional payment, that amount will be included in the next payment certificate.

WHERE THE ENGINEER DOES NOT GIVE A RULING AFTER 28 DAYS

It will be the same as if the Engineer has given a ruling, on the 28th day, rejecting the Contractor's claim.

It is important that the Contractor follows the procedure for claims. Where he does not do so, he will lose his right to claim any additional compensation or any extension of time.

**Disagreements
(Clause 57)**

Any matter causing a disagreement between the Contractor and the Engineer not required to be dealt with in terms of Clause 48 (Claims) or 58.7 (Special Disputes), is dealt with under Clause 57.

NOTIFICATION BY THE CONTRACTOR

The Contractor must, not later than 28 days after the disagreement has arisen:

- inform the Engineer in writing, of the details of the disagreement, and
- request the Engineer to give his decision on the disagreement.

THE ENGINEER'S RULING

Before giving his ruling the Engineer must first consult with the Contractor and Employer in an attempt to reach agreement. Failing agreement between the parties the Engineer must give a ruling on the Contractor's claim within 28 days of receiving the claim

**Disputes
(Clause 58)**

Clauses 58.1 to 58.6 describe the processes which may be used by either the Contractor or the Employer to dispute a ruling given by the Engineer under Clause 48 or under Clause 57.

NOTIFICATION BY THE PARTIES

The Contractor or Employer must give a written Dispute Notice to the Engineer. The Dispute Notice must:

- be given not later than 28 days after the Engineer gives his ruling
- be copied to the other party;
- refer to Clause 58; and
- state that the whole ruling is disputed, or if not, which part of the ruling is disputed

CHOICE OF DISPUTE RESOLVING PROCEDURES

The dispute must then be resolved either by **mediation**, or by **adjudication**, depending what is stated in the Contract Data. If nothing is stated in the Contract Data, the dispute must be resolved by adjudication. If there is still a dispute, it must be resolved either by **arbitration proceedings** or by **court proceedings**, depending on what is stated in the Contract Data. If nothing is stated in the Contract Data, the dispute must be resolved by court proceedings.

NB The Contractor will lose his right to dispute the ruling if he does not follow this procedure

**Subcontracting
(clause 6)**

WHAT IS SUBCONTRACTING?

A Contractor subcontracts when he contracts with someone else (the "subcontractor") to do some of the work that he has to do as part of his Contract with the Employer.

The Contractor may not contract with a subcontractor to do **all** the work under the Contract.

WHAT MUST THE CONTRACTOR DO IF HE WANTS TO SUBCONTRACT PART OF THE WORK?

The Contractor must get written permission from the Engineer. The Contractor does not need permission when:

- he employs or hires labour; or
- he buys materials which are required by the Contract; or
- he buys or hires Construction Equipment.

**Subcontracting
(continued)**

WHAT HAPPENS IF THE SUBCONTRACTOR DOES NOT DO THE WORK PROPERLY?

The Contractor is still responsible for all of the work required by his Contract with the Employer, even if some of it is done by a subcontractor. This happens even if the Employer and the Contractor agree that a certain subcontractor will be employed by the Contractor.

This means that if the Engineer rejects work done by a subcontractor:

- the Contractor must ensure that it is redone properly, by that subcontractor or someone else, and
- the Contractor will not get paid until the work is done properly.

It also means that if the Contractor does not reach practical completion by the Due Completion Date because a subcontractor is late, the Contractor will be liable for penalties.

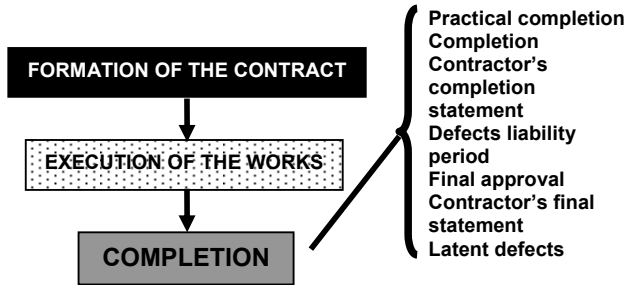
PAYMENT TO A SUBCONTRACTOR SELECTED BY THE CONTRACTOR AND THE EMPLOYER

When the Contractor and the Employer have agreed that a certain subcontractor is to be employed by the Contractor, and the Contractor decides not to pay that subcontractor because he has not been working properly, the Contractor must:

- write to the Engineer, informing him of the reasons for not paying the subcontractor, and
- give proof that he has informed the subcontractor in writing of the reasons why he will not be paid.

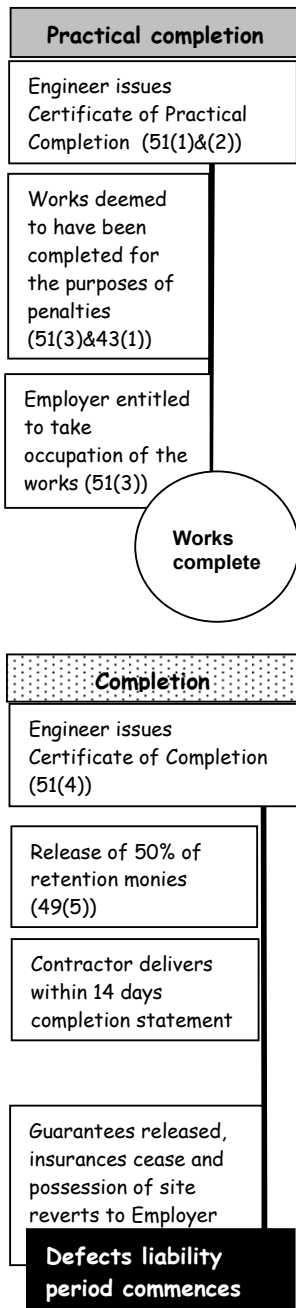
If the Contractor does not do this, the Employer may pay the subcontractor directly, and deduct the amount paid from the amount due to the Contractor.

3 Completion



The Contract does not stop when the contractor has completed the works. He still has risks, liabilities and obligations in terms of the contract.

There are number of administrative processes that need to be attended to.



WHAT IS "PRACTICAL COMPLETION"?

Practical Completion does not mean that the Contractor has completed the Works in every detail. It means that the Works are sufficiently complete that they can be safely used by the Employer for the purpose that he intended.

The Contractor may still complete minor items and fix defects after Practical Completion, as long as he does not cause inconvenience to the Employer. Practical Completion is important because if it is not achieved by the Due Completion Date, penalties will be imposed on the Contractor.

The Engineer must issue a Certificate of Practical Completion to the Contractor when he has achieved Practical Completion. Once the Certificate of Practical Completion has been issued, the Employer may occupy and use the Works, provided he gives reasonable access to the Contractor to finish the minor items still outstanding and to fix defects. Although the Employer may occupy and use the Works, the Contractor still has possession of the Works. This means that the Contractor is still responsible for loss or damage to the Works, unless the loss or damage is caused by the Employer.

THE STEPS TO BE TAKEN TO OBTAIN A CERTIFICATE OF PRACTICAL COMPLETION

- When the Contractor believes that the Works are practically complete, he must write to the Engineer and request a Certificate of Practical Completion.
- The Engineer must answer in 14 days and if he considers that the Works are not practically complete, he must give the Contractor a list of the work which must be done to make the Works practically complete.
- Once the Contractor has properly completed the work on the Engineer's list, the Engineer must issue the Certificate of Practical Completion.
- The Engineer issues with the Certificate of Practical Completion, a list detailing the items of work still to be completed and the defects to be fixed to achieve Completion, when the Certificate of Completion will be issued.

WHAT IS "COMPLETION"?

Completion is the next stage after Practical Completion. It is reached when the Contractor has completed all of the work and fixed all of the defects that were on the list issued by the Engineer with the Certificate of Practical Completion.

When this happens, the Engineer must issue a Certificate of Completion.

WHAT HAPPENS WHEN THE CERTIFICATE OF COMPLETION IS ISSUED?

- The Defects Liability Period start;
- The Guarantee is returned to the Bank or Insurance Company which issued it;
- Half the Retention Money which was deducted is paid to the Contractor;
- Possession of the site is given back to the Employer; and
- Insurance of the works stops.

CAN A CERTIFICATE OF COMPLETION BE ISSUED BEFORE THE WORKS ARE “COMPLETE”?

Yes. The Engineer can decide to issue a Certificate of Completion before all the work is complete and all the defects are fixed. If the Engineer decides to do this:

- he must state, on the Certificate of Completion, what work is still to be completed and what defects are still to be fixed, and give a date by when this must be done; and
- the Contractor must complete the work or fix the defects by the date given, otherwise, the Defects Liability Period will be extended by the amount of time the Contractor is late in doing so.

Contractor's completion statement (clause 49.9)

CONTRACTOR'S COMPLETION STATEMENT

The Contractor must issue a Completion Statement to the Engineer not later than 14 days after the Certificate of Completion has been issued. The Completion Certificate must show the value of work done up to the issue of the Certificate of Completion as well as any other information required by the Engineer.

The Engineer will then issue a payment certificate not later than 14 days after receipt of the Completion Statement from the Contractor and the Employer will pay the Contractor within 28 days of receiving the certificate.

NB The Contractor will not be entitled to any payment in respect of a matter which has not been included in the Completion Statement except for work relating to searching for defects which are unrelated to the Contractor's use of materials or workmanship.

Defects liability period (clause 53)

WHAT IS THE DEFECTS LIABILITY PERIOD?

The Defects Liability Period starts when the Certificate of Completion is issued and continues for the period given in the Contract Data.

During the Defects Liability Period, the Contractor has to obey all written instructions from the Engineer to carry out repairs and fix any defects which appear in the Permanent Works, so that, at the end of the Defects Liability Period, the Permanent Works are in the condition required by the Contract. If the Contractor does not, due to his own fault, finish the repair work or fix the defects by the end of the Defects Liability Period, the Defects Liability Period will continue until all work instructed by the Engineer is done.

WHO IS RESPONSIBLE FOR THE COST OF CARRYING OUT THE ENGINEER'S INSTRUCTIONS?

- The Contractor will carry the cost if the Engineer decides that the instruction was necessary because of the Contractor's fault;
- In other cases, the Employer will pay.

WHAT IF THE CONTRACTOR DOES NOT OBEY THE ENGINEER'S INSTRUCTIONS?

If the Contractor fails to obey a written instruction from the Engineer for 28 days, the Employer will have the right to carry out the necessary work himself or employ someone else to do so. If this happens, the Contractor will be responsible for:

- the whole cost of carrying out the necessary work, if the work was due to his own fault; or
- any additional cost that the Employer suffers by having to do the work himself or through others, if the work was not due to his own fault.

Final approval (clause 52)

WHAT IS “FINAL APPROVAL”?

Final Approval is very important for the Contractor because it means that he has finished all his duties under the Contract, except if there are Latent Defects in the Works.

Final Approval is given when the Engineer issues a Final Approval Certificate.

The Final Approval Certificate is issued once the Contractor has completed all his duties during the Defects Liability Period, or if there is no Defects Liability Period, once the Engineer is satisfied that the Contractor has completed all his duties.

**Contractor's
final statement
(clause 49.10)**

CONTRACTOR'S FINAL STATEMENT

The Contractor must issue a Final Statement to the Engineer not later than 14 days after the Final Approval Certificate has been issued. The Final Statement must claim final settlement of all monies due, save for those in dispute.

The Engineer will then issue a final payment certificate not later than 14 days after receipt of the Final Statement from the Contractor and the Employer will pay the Contractor within 28 days of receiving the certificate.

**Latent defects
(clause 52.3)**

WHAT ARE "LATENT DEFECTS"?

A Latent Defect is a defect that is not detected by ordinary inspection, but lies hidden until sometime later, when it is discovered because it causes a problem that everyone can see. An example would be weak concrete in part of a bridge column, that looks the same as strong concrete, but collapses when a heavy truck drives over the bridge.

WHO IS RESPONSIBLE FOR LATENT DEFECTS?

The Contractor is responsible for any latent defects discovered during the first 10 years after the Engineer has issued the Final Approval Certificate. The Contractor will not be responsible for any latent defects discovered 10 years after issue of the Final Approval Certificate.

**Expiry of defects
liability period**

Release of remaining
retention monies (49(5))

Contractor delivers
within 14 days final
statement

**10 year latent
defects period
commences**

4 Cancellation of contract

The Contract may be cancelled for one of 3 reasons

- 1) Due to war or emergency in which case the cancellation takes place in terms of Clause 54.
- 2) Due to the contractor's fault in which case the Employer may cancel the contract under Clause 55.

The Employer may cancel the Contract if the Contractor:

- has become insolvent and cannot pay his debts;
- has abandoned the Contract;
- has not commenced the Works or has suspended work for a period of 14 days after the Engineer has told him to proceed;
- has not removed defective materials or has not redone defective work within 14 days after the being told by the Engineer to do so;
- is not working or performing his duties as required by the Contract;
- has subcontracted part of the work without the Engineer's consent;
- has offered a gift or payment to any employee of the Employer; or
- has provided false information in the Schedules forming part of the Scope of Work.

The Employer gives a written notice to the Contractor that he is canceling the Contract, and 14 days later, the Contract will be cancelled. Thereafter:

- The Employer may expel the Contractor from site.
- The Employer may complete the Works himself, or employ other contractors to do so.
- The Employer may use any material, equipment or Temporary Works brought onto site by the Contractor to complete the Works.
- The Employer may sell any material, equipment or Temporary Works brought onto site by the Contractor, and use the money to pay for amounts which the Contractor owes him.
- The Contractor will not be entitled to receive any further payments from the Employer.
- If the Employer has to pay more to complete the Works than it would have cost him if the Contractor had completed the Works, then the Contractor must pay the Employer the additional cost.

- 3) Due to the employer's fault in which case the Contractor may cancel the contract under Clause 56.

The Contractor may cancel the Contract if the Employer

- refuses, for 14 days after the Contractor has given him written notice to do so,
 - to recognize that he is bound by the Contract; or
 - to pay the Contractor the amount stated in a payment certificate; or
 - to allow the Engineer to freely issue any certificate required by the Contract; or
- becomes insolvent; or
- passes his rights and duties under the Contract to someone else without the permission of the Contractor.

The Contractor gives a notice in writing to the Employer that he has cancelled the Contract. Thereafter:

- Those parts of the Contract which deal with Dispute Resolution or with what amounts are payable to the Employer or the Contractor stay effective;
- All unused materials, which have not been paid for by the Employer, and all Construction Equipment and Temporary Works brought to site by the Contractor must be removed by the Contractor;
- The Employer must pay the Contractor
 - for all work done and not yet paid for;
 - for any General Items certified by the Engineer;
 - for all materials or goods which the Contractor has ordered for the Works, and of which he has to accept delivery (these materials and goods then become the property of the Employer);
 - an amount certified by the Engineer to compensate the Contractor for his expenses in expecting to complete the whole of the Works;
 - for the costs of removing Construction Equipment and Temporary Works which are on site at the time of cancellation; and
 - for any additional costs suffered by the Contractor due to the cancellation.

Appendix A: Examples of Engineer's Certificates

PRACTICAL COMPLETION CERTIFICATE

It is hereby certified that the abovementioned works have been completed on
in accordance with the provisions of clause 51(1) of the *General Conditions of Contract*,
subject to the work described in the attached schedule being completed by.

..

.....
Signature: *Name:* *Date:*

Engineer

COMPLETION CERTIFICATE

It is hereby certified that the abovementioned works have been completed on
in accordance with the provisions of clause 51(4) of the *General Conditions of Contract*,
subject to the work described in the attached schedule being completed by.

..

.....
Signature: *Name:* *Date:*

Engineer

FINAL APPROVAL CERTIFICATE

It is hereby certified that in accordance with the provisions of clause 52 of the *General Conditions of Contract*, that the abovementioned works have been completed and all defects have been corrected in accordance with the provisions of the *Contract*.

Certified by the Engineer:

.....
Signature: *Name:* *Date:*

Appendix B: Notices and claims submitted by the Contractor

B.1 Introduction

There are more than 40 different notifications and requests, excluding payment certificate matters and responding to requests or instructions from the Engineer that a Contractor may encounter in complying with GCC 2004. All these notifications and requests must be addressed to the Engineer and must be signed and dated by a person acting on behalf of the Contractor. (Refer to Clause 1.7 regarding the authority of the Contractor's representative.)

The drafting of these notifications and requests can be simplified by using a model or a template for giving a good reason for the communication with an attachment giving the specific contractual information.

These notifications and requests can be subdivided into three categories:

- 1) Notifications – submitting data or information.
- 2) Requests – requesting consent or approval of a matter or permission to do something.
- 3) Assertions – insistence on a right or a claim.

For the requests and assertions the attachments should in addition to the specific contractual requirements in general substantiate the request or assertion by giving an explanation of the request or assertion followed by all the facts and arguments in support of the request or assertion. This should be followed by the relief or remedy sought. All relevant documents should also be attached.

Note: In the following examples a forward slash, /, stands for an option to be exercised.

B.2 Notifications

Note: In the following examples a forward slash, /, stands for an option to be exercised.

In accordance with GCC 2004 Clause * is/are attached and submitted for your notification.

*1.2.2 the Contractor's physical address / postal address/ e-mail address / fax number where he will receive notices has/have changed and ...

*12.2 the programme of the Works ...

*23.8 the Contractor's report on tests carried out ...

*25.2 the part of the Works or excavations that are ready / about to be ready for examination ...

*30.1 the name and address of the owner of Construction Equipment not owned by the Contractor ...

* 34.1 a report on an occurrence on the Works / Site that caused damage to property / injury to persons / death to persons ...

*35.6 the policies by which the insurances are effected ...

*35.6 proof of payment of all premiums for the policies by which the insurances are effected ...

*37.2.5 the triplicate list of the exact occupation and time of all workmen and foremen employed on dayworks and a statement showing the description and quantity of all materials and Construction Equipment used for the dayworks ...

B.3 Requests

Your written consent / approval / permission is requested in accordance with *GCC 2004 Clause* * as set out in the attachment.

*6.2 for subcontracting part of the Contract ...

*13.7 for design and details of work required by the Contract ...

* 20.1 for using part of the Site for the Contractor's employees' payment / housing / feeding / transport ...

*22.2 for the Contractor's Site Agent ...

*30.1 for removal of Construction Equipment from Site ...

*38.1.1 for carrying out work outside normal working hours / working days ...

*39.2 to proceed with the Works in respect of which progress is suspended

*48.3.1 for the setting out of all the facts and circumstances relating to the claim in a format ...

*48.3.3 for the correctness of the records of facts and circumstances relating to the claim ...

*51.1 for Practical Completion of the Works ...

B.4 Assertions

B.4.1 Notices

Notice is given in accordance with *GCC 2004 Clause* * as set out in the attachment.

*2.8 that the Contractor is dissatisfied with the order / instruction of the Engineer's Representative ...

*13.3 that additional instructions / drawings to comply with the terms of the Contract are required ...

*36.2.2 that the oral / written order from the Engineer is a variation order ...

*41.1 that compliance with the terms of the Contract is demanded ...

*47.1 that adverse physical conditions requiring additional work have been encountered ...

*47.2 that additional / more extensive adverse physical conditions requiring further additional work have been encountered ...

*57.1 of a disagreement with the Engineer with supporting particulars ...

*58.1.1 that the Contractor is disputing the ruling of the Engineer ...
(A copy of this notice must also be sent to the Employer.)

4.2 Claims in accordance with Clause 48

Clause 48.1.1 – for a non-recurrent event

In accordance with *GCC 2004 Clause 48.1.1* extension of time / additional compensation is claimed in terms of *GCC 2004 Clause *.....* as set out in the attachment.

Clause 48.1.2 – for ongoing events

Notice is given in accordance with *GCC 2004 Clause 48.1.2* of an intention to claim extension of time / additional compensation in terms of *GCC 2004 Clause ** as set out in the attachment.

Clause 48.1.3 – for monthly updating particulars for ongoing events

In accordance with *GCC 2004 Clause 48.1.3* the monthly updated particulars of the ongoing events or circumstances relating to the claim in terms of *GCC 2004 Clause ** are set out in the attachment.

Clause 48.1.3 – for the final claim when the ongoing events have stopped

In accordance with *GCC 2004 Clause 48.1.3* extension of time / additional compensation is finally claimed in terms of *GCC 2004 Clause *.....* as set out in the attachment.

*3.2 for compliance with an instruction regarding an ambiguity / discrepancy between the documents ...

*11.2 for failure of the Employer to give possession of Site ...

*13.6 for failure by the Engineer to deliver instructions and drawings timeously ...

*15.1 for carrying out the Engineer's instructions regarding the discovery of fossils / coins / articles of value or antiquity / structures or things of geological or archaeological interest ...

*18.2 for providing facilities on instructions from the Engineer to the Employer / other contractors / local or statutory authorities ...

*25.2 for an unreasonable delay by the Engineer to examine the Works or excavations ...

*25.3 for uncovering / making openings and reinstating part of the Works

*39.1.5 for suspending the Works on the written order of the Engineer ...

*42.2 for circumstances entitling the Contractor to extension of time for the completion of the Works ...

*47.4 for additional work in encountering adverse physical conditions / artificial obstructions ...

*54.3 for increase in Cost in the execution of the works which is specifically attributable or consequent upon outbreak of war / armed hostilities / economic sanctions / state of emergency / riot / commotion / politically motivated sabotage / acts of terrorism or disorder ...