



CLAIMS CLASS

MODULE 9

Risk, Liability and Force Majeure

VIDEO 1

**Indemnities, Employer's Risks, Liability, Insurance,
Force Majeure**

Clause 17 – Risk and Responsibility

17.1 Indemnities

- The Employer / Contractor shall indemnify the other Party and the other Party's Personnel against all claims, damages, losses and expenses caused by the Party, the Party's Personnel or the Party's agents in respect of:
 - Bodily injury
 - Sickness
 - Disease
 - Death
 - Negligence
 - Wilful act
 - Breach of Contract

Clause 17 – Risk and Responsibility

17.2 Contractor's Care of the Works

- The Contractor shall:
 - Take full responsibility for the care of the Works and Goods until the Taking-Over Certificate is issued
 - Take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate
 - Rectify loss or damage if any loss or damage happens to the Works, Goods or Contractor's Documents

Clause 17 – Risk and Responsibility

17.3 Employer's Risks

- This clause defines the risks for which the Employer bears the risk of loss or damage referred to in Sub-Clause 17.4 (*Consequences of Employer's Risks*)
- The risks include:
 - War, hostilities, act of foreign enemies
 - Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war
 - Riot, commotion or disorder
 - Munitions of war, explosive materials, ionising radiation or contamination by radioactivity

Clause 17 – Risk and Responsibility

17.3 Employer's Risks

- Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds
- Use or occupation by the Employer of any part of the Permanent Works
- Design of any part of the Works by the Employer
- Any operation of the forces of nature which is unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken precautions

Clause 17 – Risk and Responsibility

17.4 Consequences of Employer's Risks

- If an Employer's risk event occurs, the Contractor shall:
 - Give notice in the case of an event which results in loss or damage
 - Rectify the loss or damage as required by the Engineer
- If the Contractor suffers delay or incurs Cost as a result of these matters, he shall give further notice and be entitled to an extension of time and the payment of Cost and profit in certain stated cases

Clause 17 – Risk and Responsibility

17.6 Limitation of Liability

- Removes any liability for losses other than for direct costs, except due to circumstances entitling the Contractor to terminate and those circumstances listed in Sub-Clause 17.1 (*Indemnities*)
- The total liability of the Contractor shall not exceed the sum stated in the Particular Conditions or, if a sum is not so stated, the Accepted Contract Amount
- This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party

Clause 18 – Insurance

18.1 General Requirements for Insurances

- The "insuring Party" means the Party responsible for effecting and maintaining the insurance specified in subsequent sub-clauses
- The insuring Party shall:
 - Effect and maintain the insurances
 - Submit evidence that the insurances have been effected and copies of the policies
 - Submit evidence of payment of premiums
 - Inform the insurers of any relevant changes to the execution of the Works and ensure that insurance is maintained
 - Not make any material alteration to the terms of any insurance without approval of the Employer

Clause 18 – Insurance

18.1 General Requirements for Insurances

- If the insuring Party fails to effect and keep in force any of the insurances, or fails to provide satisfactory evidence and copies of policies, the other Party may effect the insurance. The insuring Party shall pay the amount of these premiums to the other Party
- Nothing in this Clause limits the liabilities of the insuring party
- Any amounts not insured or not recovered from the insurers shall be borne by the insuring party
- If the insuring Party fails to effect and keep in force an insurance which is available and which it is required under the Contract, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party
- Payments by one Party to the other Party shall be subject to Employer's or Contractor's Claims as applicable

Clause 18 – Insurance

18.2 Insurance for Works and Contractor's Equipment

- The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost
- This insurance shall be effective from the date specified in the Appendix to Tender until the date of issue of the Taking-Over Certificate
- The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value
- If the insuring Party is not mentioned in the Particular Conditions, this insurance shall be provided by the Contractor

Clause 18 – Insurance

18.3 Insurance against Injury to Persons and Damage to Property

- The insuring Party shall insure against any loss, damage, death or bodily injury which may occur to any physical property or to any person, which may arise out of the Contractor's performance of the Contract
- This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to Tender, with no limit on the number of occurrences
- If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply
- Unless otherwise stated in the Particular Conditions, the insurances shall be effected by the Contractor

Clause 18 – Insurance

18.4 Insurance for Contractor's Personnel

- The Contractor shall effect and maintain insurance against injury, sickness, disease or death of any person employed by the Contractor

Clause 19 – Force Majeure

19.1 Definition of Force Majeure

- "Force Majeure" is defined as an exceptional event or circumstance:
 - Which is beyond a Party's control
 - Which could not reasonably have provided against before entering into the Contract
 - Which could not reasonably have been avoided or overcome
 - Which is not substantially attributable to the other Party
- All the above conditions must be satisfied for an event to be considered as Force Majeure

Clause 19 – Force Majeure

19.1 Definition of Force Majeure

- Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below:
 - War, hostilities, invasion, act of foreign enemies
 - Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war
 - Riot, commotion, disorder, strike or lockout
 - Munitions of war, explosive materials, ionising radiation or contamination by radioactivity
 - Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity

Clause 19 – Force Majeure

19.2 Notices of Force Majeure

- If a Party is prevented from performing any of its obligations by Force Majeure, then it shall give notice to the other Party within 14-days after becoming aware of the event
- The Party shall then be excused performance for so long as such Force Majeure prevents it from performing them
- Force Majeure shall not apply to obligations to make payments

Clause 19 – Force Majeure

19.3 Duty to Minimise Delay

- Each Party shall at all times use all reasonable endeavours to minimise any delay
- The Party shall give notice when it ceases to be affected by the Force Majeure event

Clause 19 – Force Majeure

19.4 Consequences of Force Majeure

- If the Contractor suffers delay or incurs Cost as a result of Force Majeure, he shall give further notice and be entitled to an extension of time and in some circumstances, the payment of Cost

Clause 19 – Force Majeure

19.6 Optional Termination, Payment and Release

- If the execution of the Works is prevented for a continuous period of 84-days or for multiple periods which total more than 140-days, either Party may give to the other Party a notice of termination of the Contract
- Termination shall take effect 7-days after the notice is given
- Upon termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:
 - The amounts payable for any work carried out

Clause 19 – Force Majeure

19.6 Optional Termination, Payment and Release

- The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. Such Plant and Materials shall become the property of the Employer when paid for
- Any other Cost which was incurred by the Contractor
- The Cost of removal of Temporary Works and Contractor's Equipment from the Site and to the Contractor's works
- The Cost of repatriation of the Contractor's staff and labour