



## Claims arising under a construction contract: A quick guide

Construction projects rarely run entirely smoothly! Additional works may be requested by the employer, or become necessary when things are “discovered” on site; delays may mean the building takes longer to complete; or it may cost more than the parties originally contracted for.



### 1. What the contractor may claim from the employer

A contractor may claim against the employer for more time and money and for the cost of changes to the works.

Common heads of claim for loss and expense include prolongation costs; finance charges; loss of profits; general disruption and wasted management time.

#### (a) A claim for an extension of time to the completion date

The parties usually agree a completion date in their contract. If not, the contractor should complete its works within a reasonable time. Standard form contracts usually allow for the completion date to be adjusted, to award the contractor an extension of time. The contractor should comply with the contract procedure. It is not always easy to work out what caused the delay and whose fault it was; sometimes there are competing causes of delay so full records should be kept. If the contractor caused the delay, the employer may have the right to claim liquidated damages from the contractor.

#### (c) A claim for the cost of variations

Sometimes called a change, additional work or extras, a contractor may claim for a variation when the employer alters the contractor’s scope of work. Standard form contracts usually include a clause that defines what a variation is and provides a procedure to value the variation. If so, the contractor should comply with that procedure.

#### (b) A claim for loss and expense

A contractor often claims loss and expense at the same time as an extension of time. It is the “money” side of a contractor’s claim for delay and disruption (a claim for the cost of inefficient working and employing more resources). Standard form contracts usually allow the contractor to claim for delayed or disrupted work. The contractor should comply with the contract procedure.

Both parties may benefit from a clause regarding variations. The employer can make changes so that it gets the building it wants, and the contractor gets paid for providing extra or different work or materials.

Claiming for a variation often gives rise to disputes over whether the additional work is outside the original scope of work; or the person who ordered the work was authorised to do so.

#### (d) A claim for payment under a quantum meruit

Under a quantum meruit claim, the contractor claims a reasonable sum for the work done and the materials it has supplied. The parties (or the Courts) usually value a quantum meruit claim at a fair commercial rate. A contractor cannot claim a quantum meruit if the parties have contracted to pay an agreed sum. It will be relevant if the parties have not agreed a contract or not agreed all the terms including the price for the work; or if they have an agreement to pay a reasonable sum for the work done; or they have agreed a scope of work under the original contract and the work falls outside that scope (where the parties did not have or did not use a variation procedure in the contract).



**Marsons Solicitors LLP**  
Waterford House  
4 Newman Road  
Bromley Kent BR1 1RJ



## **2. What the employer may claim from the contractor**

The employer may have a claim against the contractor because the works are of poor quality or are defective, or because the project is delayed.

### **(a) A claim for poor workmanship and/or defects in the works**

Defective work arguments frequently occur in construction projects. Defects may range from small value items included within snagging lists at practical completion, to significant but undetected (or latent problems). A defect is generally a breach of contract by the contractor but could relate to a design issue rather than the work carried out, in which case a professional consultant might be liable.

Standard form contracts usually contain a defects liability clause which obliges the contractor to return to site, at its own cost during the defects liability period or rectification period (normally 6 or 12 months), and remedy any defects that arise.

### **(b) A claim for liquidated damages**

A liquidated damages clause compensates the employer if the contractor completes its work late. It requires the contractor to pay the employer a pre-determined rate of damages, that should be a genuine pre-estimate of the employer's loss. A liquidated damages clause is a common feature for many standard form contracts. The employer must ensure that it meets any contractual notice requirements in the contract before it claims liquidated damages from the contractor. The clause may take effect as an exhaustive remedy as the clause may be the employer's only remedy for the contractor's delay. The employer usually deducts or sets off the liquidated damages from the sums it owes to the contractor.

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Marsons Solicitors LLP

**Tel: 020 8313 1300**

Jennifer White  
[jennifer.white@marsons.co.uk](mailto:jennifer.white@marsons.co.uk)



Meena Gupta  
[meena.gupta@marsons.co.uk](mailto:meena.gupta@marsons.co.uk)



Greg Bush  
[greg.bush@marsons.co.uk](mailto:greg.bush@marsons.co.uk)

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