

CLC COVID-19: CONTRACTUAL DISPUTES & COLLABORATION GUIDANCE

TEMPLATE C – CONTRACTOR NOTICE UNDER JCT 2016 D&B

SUMMARY

- To be read in conjunction with CLC COVID-19 Contractual Best Practice Guidance.
- Template Notice Letter from the Contractor to the Employer – notification of delay of progress pursuant to the JCT 2016 Design and Build (D&B) Contract.
- Sets out the relevant contractual clauses and information to be provided in respect of the; cause of the delay, estimate of delay and other likely effects under the JCT 2016 D&B.

1. EXPLANATORY NOTES

- 1.1. With the COVID-19 pandemic continually changing and creating uncertainty, notification of delay to progress pursuant to the JCT 2016 Design and Build Contract (JCT 2016 D&B) should be issued. This template notice letter under clause 2.24.1 by Contractor of delay to progress may be adapted and used for such purposes.
- 1.2. The template notice has been drafted on the basis the Contract is an unamended JCT 2016 D&B. Regard should be had to these notes before issue.
- 1.3. Please check the Contract carefully in relation to whom any correspondence is to be given, and whether it needs to be given in a particular manner (e.g. Special Delivery). The JCT 2016 D&B states the delay notice is to be given to the Employer¹, but adds that the Employer's Agent can accept any notice on behalf of the Employer² but the notice should be given to the address in the Contract Particulars unless the Employer/Employer's Agent has notified a different address. If no address is stated in the Contract Particulars, then it should be sent to last known principal business address or (where a body corporate) its registered or principal office³.
- 1.4. It is acceptable to:
 - give a notice to more than one party but, if there is any doubt, the Contract should be checked carefully; and
 - issue by email (unless the parties have agreed in writing otherwise⁴), under an unamended JCT 2016 D&B - your contract may be different.
- 1.5. The address of the site, project and description of the works should be taken from the Contract.
- 1.6. The delay notice needs to state:
 - the "material circumstances";
 - the causes of the delay; and
 - whether the cause is a Relevant Event⁵.

¹ Clause 2.24.1

² Article 3

³ Paragraph 1.7 and Clause 1.7.3

⁴ Clause 1.7.2

⁵ Clause 2.24.1

CLC COVID-19: CONTRACTUAL DISPUTES & COLLABORATION GUIDANCE

- 1.7. In this initial notice there is no mandatory requirement to state or estimate what the delay to the Completion Date will be, however it should be done if practicable. Wording for two suggested alternatives has been included⁶.
- 1.8. The Contractor should state whether the Contractor “is being” or is “likely to be” delayed. The notice has been drafted on the basis that COVID-19 has delayed the Works and it is a Relevant Event. Please note however that this will only give rise to an extension of time and not additional monies. Please consider all of the other Relevant Events which could give rise to an extension of time and/or loss and expense (see the [CLC COVID-19 Contractual Best Practice Guidance](#) – e.g. if the Employer has failed to give instructions on time due to a shortage of staff as a result of the coronavirus outbreak, this could still give rise to an extension of time, but this also could give rise to loss and expense, as a Relevant Matter). It is perfectly acceptable to mention more than one Relevant Event in a notice.
- 1.9. The notice must state that what has happened is a “Relevant Event” – i.e. a reason why an extension should be given.
- 1.10. These further particulars can be given either in the notice, bearing in mind that the effects of COVID-19 are very difficult to predict, or in a further letter setting out the expected effects including an estimate of the delay to any the Completion Date or any Section⁷. The particulars, if not set out in the letter, should be sent “as soon as possible” after the letter⁸.
- 1.11. Any estimate of a delay to a Section/Completion Date may be tentative. The Contractor is obliged to notify the Employer of any material change in the estimated delay to the Section/Completion Date or any other particulars (i.e. the impact/effects of COVID-19 on the Works)⁹.
- 1.12. This is general guidance and the letter is a general template. Nothing in this document constitutes legal advice. A party’s contractual rights will depend on the wording of its particular contract and the factual circumstances on its project. If in doubt, advice should be sought.
- 1.13. If you have any comments or feedback please email:
construction.enquiries@beis.gov.uk

⁶ The [CLC Impact Assessment Toolkit](#) contains general guidance on demonstrating the impact of COVID-19 although the specific requirements of any contract should be considered when doing so.

⁷ Clause 2.24.1

⁸ Clause 2.24.2

⁹ Clause 2.24.3

CLC COVID-19: CONTRACTUAL DISPUTES & COLLABORATION GUIDANCE

CONTRACTOR NOTICE UNDER JCT 2016 DESIGN AND BUILD CONTRACT

[*** Insert Employer's Details]

[*** Insert Delivery Method]

[*** Insert Date]

Dear Sir/Madam,

Project [*]¹⁰ ("the Project")¹¹ – [***] Works ("the Works")**

Contract dated [*] ("the Contract") – notice under clause 2.24.1 by Contractor of delay to progress**

Given the impact that COVID-19 has had on our Contract and the Project as a whole, we feel it is appropriate to reaffirm our commitment, whilst operating the contractual systems.

By virtue of clause 2.24.1 of the Contract, if and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed, we have to give notice of the following:

1. It has become reasonably apparent that the progress of the Works (or Section) [*** is being/is likely to be]¹² delayed.
2. The material circumstance giving rise to, and causing, the delay is the COVID-19 pandemic¹³.
3. As a result of the COVID-19 pandemic, we have been unable to [*** describe how Works delayed, e.g. unable to secure sufficient labour to carry out the Works in a particular area]¹⁴.
4. In our opinion the COVID-19 pandemic is and has continued to be, a Relevant Event under clause 2.26.14 (Force Majeure) of the Contract¹⁵.
5. [*** The situation with COVID-19 is constantly changing. As a result it is difficult to estimate the expected delay which will be caused by the COVID-19 pandemic, however, at this stage, we now estimate that there has been and will be an expected delay of [***] weeks to the completion of the Works (or Section) beyond the Completion Date.]¹⁶

OR

[We will, as soon as possible, give particulars of the expected effects of the Relevant Event(s) including an estimate of the expected delay in completion of the Works (or any Section) beyond the Completion Date.]¹⁷

6. Our principal duties have been to ensure the health and safety of our personnel, sub contractors and indeed everyone involved or affected by the Works, and to ensure a safe and productive delivery of the Project.

¹⁰ See note 1.5 above.

¹¹ See note 1.5. above.

¹² See note 1.8 above.

¹³ See note 1.6 above.

¹⁴ See note 1.6 above.

¹⁵ See note 1.9 above.

¹⁶ See note 1.6 and 1.10 above.

¹⁷ See note 1.6 and 1.10 above.

CLC COVID-19: CONTRACTUAL DISPUTES & COLLABORATION GUIDANCE

We will at all times work with you and with our supply chain to minimise any effects that COVID-19 may have on not only the Works but all those involved.

In the meantime, we will keep the status of the Project under constant review.

Yours faithfully,

For and on behalf of [***Insert Contractor entity]¹⁸

¹⁸ The entity for the Contractor should be the same as that stated in the Contract.