

Dear Sir,

Reference to your letter ref. AHCO/0007/0979/15/SB dated 23 June 2015, we would like to advise you of our rejection of the contents thereof.

Needless to say the termination for default is the most severe remedy available to the Company, yet it is being dealt with very lightly by the Engineer.

We would like to highlight the following:-

1. The notice of termination itself contained no grounds for termination, the Engineer just settled by referring the Contractor to the grounds in his letter dated 12 May 2015, without a reference, but we assume it refers to the letter Ref. AHCO/0005/0979/15/SB.
2. In the said letter, the Engineer stated *"If within seven (7) days after receipt of this written notice of default we **determine** that Saudi Amana is failing to remedy such default or provide satisfactory evidence that such default will be corrected the Employer shall be entitled to terminate the Contract."*(Emphasis added.)
3. However, this provision is not as exactly stated by the Engineer, the exact wording of this part of GC-50.1 is *"if within seven (7) days after receipt of a written notice of default from the Company, the Contractor fails to remedy such default or to provide satisfactory evidence that such default will be corrected"*
4. Hence, the Contractor failure to remedy or to provide evidence is a **factual** matter and not an Engineer **determination**.
5. When it is a factual matter, not an Engineer determination, the burden of proof lies upon the claimant, in this case the claimant is the Engineer. That is to say that the Engineer is the one who has to provide evidence that in fact the Contractor failed to remedy such default **or to provide evidence that such default will be corrected**.
6. In this regard we inform you that following the said notice of default, we conducted a meeting on 14 May 2015 and agreed a course of action which is currently almost complete. This is an enough **evidence** provided by the Contractor that *"the default will be corrected"*.
7. Hence, nothing in this course of events can be construed as failure to provide evidence that the defect will be remedied, the Engineer might argue that the remedy is taking longer than expected, and whilst we assure you that we will do our best endeavors to complete on urgent basis, but in the meantime we would like to remind you that no time frame for remedying the defect is provided in GC-50, hence the alleged delay (if any) in its own right cannot be a ground for termination for default.
8. Without prejudice to all the above, we are surprised that the Engineer is depending on a notice sent by the Engineer, whilst it is clearly stated in GC-50.1 that the notice should be sent by **the Company**, hence the already sent notice does not qualify as a notice for default under GC-50.1 and we reject it from our end, and consequently we reject your alleged termination.

Accordingly, we hope that we have clarified the issue to the Engineer/Company and we expect you to withdraw this **invalid** Notice of Termination for Default urgently in order not to hamper the relation between the Contractor and the Company.