

Dear Sir,

As agreed in our meeting held on 23 July 2009, please find our reply to your claims as follows:-

**1. Cost Saving**

**XX Claim<sup>1</sup>**

Due to the change of piling solution into normal foundation solution, XX wants to share a part of the resultant cost saving.

**YY Reply**

- 1.1 Our Subcontract is a Design and Build contract; hence we are responsible for providing a building that is fit for its purpose.
- 1.2 The design and build contractor is at liberty to adopt the structural solution that will result in a safe and sound building since the liability of the same will lie with him.
- 1.3 However, the Subcontractor must inform the Main Contractor of any proposed changes to Specifications, and this step was complied with by the drawings incorporating the new foundation solution.
- 1.4 XX did not notify YY of their intention to make any deduction from the contract price or to share any of the cost saving (if any), which should have been notified within at least a reasonable time, to allow the Subcontractor to assess the feasibility of the new solution after the sharing of cost saving, and it is not acceptable to be notified more than one and half year later.
- 1.5 Notwithstanding the lack of notification, even if we were notified in due course, still XX request to share our cost saving does not have any contractual grounds, since if there is a "gain sharing" it is always associated with a "pain sharing", which is not the case in our Subcontract, since we did not request for any cost difference in items for which we ended up paying more than the contract price allocated therefor due to market fluctuation.

---

<sup>1</sup> All stated XX Claims throughout this document, are stated as is without alteration for the purpose of presenting XX point of view, the stating thereof does not constitute YY's approval of the same.

1.6 Accordingly, we find ~~XX~~ request to deduct amount in return of cost saving (if any) for the adopted foundation solution is totally unsubstantiated and we request you to provide your contractual substantiation of the same.

## 2. Back-charges:-

### 2.1 Design checker:-

#### ~~XX~~ Claim

~~XX~~ hired a design checker to check ~~YY~~ design and is seeking to back charge this cost to ~~YY~~.

#### ~~YY~~ Reply

Checking the design or the like falls within the normal duties of the Engineer, and pursuant to Sub-Clause 2.6 of the Subcontract, start quote "The Engineer may be an employee of the Contractor or a consultant" end quote. Hence, the hiring of the same was envisaged by the Subcontract, and ~~YY~~ should not be charged for the fact of ~~XX~~ fulfilling their normal contractual duties.

### 2.2 Mobile Crane:-

#### ~~XX~~ Claim

Due to ~~YY~~ delay in finishing the Over Head crane on time, ~~XX~~ had to hire a mobile crane, and is seeking reimbursement of that cost from ~~YY~~.

#### ~~YY~~ Reply

Whether or not ~~YY~~ was in delay in finishing the over head crane will be discussed under the heading of Liquidated Damages.

Notwithstanding the above, even if ~~YY~~ was in delay, all incurred cost by the Contractor due to this delay is being compensated by the liquidated damages (if any), we would like to refer you to Sub-Clause 9.1 of the Subcontract which states "Payment by the Subcontractor to the Contractor of liquidated damages shall be deemed settlement of any damages due to the Contractor arising from a Subcontractor's delay" (emphasis added).

Hence, if ~~YY~~ was proved to be in delay and liable for liquidated damages, the payment thereof should discharge all ~~YY~~ liabilities arising from the delay and should compensate ~~XX~~ for all cost incurred due to this delay. Otherwise, ~~XX~~ will be recovering for the same damage twice, once as included in the liquidated damages, and once as a separate back charging to ~~YY~~.

### 2.3 Advisor for Crane Misalignment:-

#### ~~XX~~ Claim

~~XX~~ had to hire an advisor to rectify the crane misalignment in some areas and is seeking to back charge the cost thereof to ~~YY~~.

### XX Reply

Decision of this matter will be made once we receive the sought cost of the advisor from

#### **2.4 Rubber Pad:-**

### XX Claim

The eccentricity between Crane beam axes (design and supply by Zamil and installed by YY) and crane rails (supplied by XX and installed by YY) should be no more than zero, as advised by Zamil. However, the actual eccentricity was circa 3.0mm. Consequently, XX had to install rubber pad to eliminate the effect of any eccentricity.

### YY Reply

As conveyed in the meeting held between XX and YY on 23 July 2009, if Zamil confirmed that the eccentricity tolerance is not zero, the rubber pad will be of no use (or for other use than to rectify the effect of eccentricity tolerance) and consequently, this claim will be waived. And since Zamil already confirmed that eccentricity tolerance is half the web thickness, which is 6.0 mm (i.e. greater than the actual eccentricity of 3.0mm), this claim should now be waived by XX (Refer to attached Attachment No. 01).

On the other hand, since YY installed the Rubber Pads which was not part of our scope, we will provide you with our claim for cost and time in due course.

#### **3. Liquidated Damages:-**

Please note that the main reasons for the delay in some milestones were attributable to the Main Contractor's delay in the submission of the Basic Engineering Design, which was a condition precedent to Subcontractor activities. Please find attached a narrative explaining the major delaying factors in the submission of the Basic Engineering Design by XX (Attachment No. 02).

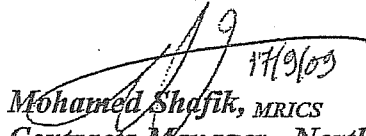
Regarding the issue of liquidated damages for the delay in the overall Time for Completion, please note that this can only be discussed when the project reaches its end, in order to calculate the exact delay from the final agreed Time for Completion.

#### **4. List of attendees:-**

As per your request please note the meeting attendees from our part:-

Please note that the above is the full team that will be dealing with the claims issue, attendance of part/all will be as required and/or relevant. From the other hand, kindly provide the list of attendees from your part.

*Best Regards,  
for*

  
17/9/09  
*Mohamed Shafik, MRICS  
Contracts Manager - Northern Emirates*