

# Delay Damages DD for Time for Completion [SC08.2] / Ref Red/Pink 2010

## 0 \_ Understanding of Penalty and Delay Damages and their basic elements

Identify and distinguish between Penalty and pre-estimated Value of Delay Damages!  
The Word penalty used in the Contract might have in the context heavy legal consequences. The wording and impact shall be taken into account.

## 1 \_ Contractual pre-determined sanctions for Contractor's default

The most implementing Agencies use the regulations of the DD mechanically, without reflecting the Project environment

A ... **daily based**, i.e. 0,1% ACA per day Delay Damages / Liquidated D.

B ... **max amount** 10% \* ACA

C ... 10% div 0,1% per day => max 100 days to pay the damages.

Note: The payment of the Delay Damages does not relieve the Contractor to complete the Works and any other D + O + R.

## 2 \_ Reasonable / realistic pre-estimate of DD for public projects is difficult provide a realistic Breakdown of DD-Values.

The delay damage (SC08.7) shall the **only damages due to default** (TfC SC08.2) and notice of **Employer's Claim** (SC02.5) and then in the event of Termination by Employer [SC15.2]. Nowadays Arbitrators challenge an inflated DD-amount and request in Disputes a realistic breakdown of DD-Value, esp. for public projects.

## 3\_ Search for Clarification + Certainty for "completion of parts and whole

In case Milestones / Sections are defined and parts to put into use" (unpredictable) should inquire - during the Bid preparation period / ahead of Bid submission – the topic about terms / interpretation of "**substantial completion**", adaption to the **Contract Price** (Performance Security 25%-2010 / 20%-2017), the **Retention Money** (SC14.9), and how the **Remainder of the Delay Damages** shall be reduced (SC10.2 para5).

Note: Proportions with Sub-Contractors shall not discriminate them.

Same Conditions of Contract shall contractual agreed with the Main Contractor.

## 4 \_ How to apply delay damages in ref to taking over of Sections or parts of Works

*The provisions of SC08.7 [Delay Damages] shall only apply to the daily rate of delay damages and shall not affect the maximum amount of these damages (SC10.2 p5)*

Sample of Computation:

(1) Partial Taking over of a Section or to Put into use (SC10.1+SC10.2) without culpable Contractor's delay. Say the section sums up to value of 30% out of 100% Contract Price.

(2) Hence the **daily rate for the next Sections of whole of Works shall be reduced** >>> 70% CP \* 0,1% => 0,07 % daily rate reduced, but the 100% DD-amount remains. The reduced daily rate will applied for **culpable delay** for a period of remaining 10% DD divided by **reduce daily rate** from 0,10% to 0,07% => 10% div 0,07% = 142 days.

However the Retention money pertinent to SC14.9 [Payment of Retention Money] will be reduced by 30%