

Breach of Conditions of Contract by EMPLOYER

How does the “legitimate” Counter-Actions look like?

Fact (i) _ **Employer’s instructs** the Engineer, to **deduct** amounts from the IPC [SC14.6 RB1999], **without** a formal **Notice of Determination** pursuant to SC03.5 [RB1990] or SC03.7 [RB2017] based on an Employer’s Claim SC02.5 [RB1999] or SC20.1 (a) + 20.2 [RB2017 = equal legal treatment].

Fact (ii) _ **Employer’s Action**, he does **deduct autocratic** an amount from the IPC **and does not pay the certified IPC** [SC14.3]

Counter-Action 1 _ Do **Engineers** get indirectly intimidated by Employers to infringe the IPC against the Rule of Law / against FiDiC Conditions of Contract, in order to expect succeeding Contracts. Actually, the Engineer breaches the Contract and the Employer is responsible for his Personnel. But the Engineer **contravenes his duties**, and hence he is **indirectly liable** for the Contractor’s loss and damage. It is therefore advisable to **record such requests (oral witnesses)** to deduct the IPC.

Counter-Action 2 _ Do **Contractor** send an admissible (i) “Notice to Claim” for **interest rates** and (ii) “**Notice to Suspend**” (disruption and delay) with the **option to terminate** the Contract, if the Employer failed to pay the full IPC amount – without deductions - .

Grounds/Reasons for Claims either Contractor’s (SC20.1) or Employer’s Entitlement (SC02.5)

01.9 – 02.1 - **02.5** -04.7 – 04.12 – **04.19** -**04.20** – 04.24 – 07.4 – **07.5** – **07.6** – 08.4 - 08.5 – **08.6** – **08.7** - 08.9 - **09.4** - 10.2 / **10.2** – 10.3 – **11.3** – **11.4** – 11.8 – 12.2 (P&DB) - 12.3 – **12.3** (P&DB) - 12.4 – **12.4** (P&DB) - 13.2 – 13.3 - 13.7+ /**13.7-** – 13.8+ /**13.8-** - 14.4 – 14.8 - **15.3** – **15.4** - 16.1 – 16.4 – 17.1 / **17.1** - 17.4 – 18.1 / **18.1** – **18.2** - 19.4 – 19.6 - 20.1 - (DB issues are not considered here) www.gub21.de/03.5+ClaimSC.pdf

Fact	RB 1999	RB 2017	HFG Notes/ improvement for RB2024
Permanent works + VAR	14.3 (a)	14.3 (i)	(iA) to split up in perm. W. and
RB1999 : including Variations , but excluding items described in sub-paragraphs (b) to (g) RB2017 : including Variations , but excluding items described in sub-paragraph (ii) to (x) <i>Comments by HFG: Variations should separately monitored. Where do you monitor provisional R or P of SC12.3 ?</i>			<i>Variations / Engineers Design Modifications [add minus omit = Change in Variation amount] should be shown under a separate item (iB) >>> 14.3 (vii) RB2017</i>
Add or deduct SC13.7 Legis & SC13.8 Cost (SC13.6/SC13.7)	14.3 (b)	14.3 (ii)	
Deduct for retention up to limit PCC / SC14.9	14.3 (c)	14.3 (iii)	<i>RB2017: sequence in release.</i>
Add or deduct advance payment / repayment SC14.2	14.3 (d)	14.3 (iv)	
Add or deduct “ Plant ” and Material on Site (MoS) SC14.5	14.3 (e)	14.3 (v)	
“any other additions *** (SC14.8, 19.6) or deductions, which MAY have become due under the Contract or otherwise, incl. those under Clause 20 [Claims, Disputes & Arbitration]”	14.3 (f)	pls see next line	<i>For Contractor’s Claim only, but not expressively stated for Employer’s Claim SC02.5</i>
“any other additions and/or deductions, which have become due under the Contract or otherwise, including those under Sub-Clause 03.7 [Agreement or Determination]	xxx	14.3 (vi)	<i>SC02.5 needs substantiated Claim and formal Notice of Determination subject to SC03.5</i>
any amounts to be added for Provisional Sums under SC 13.4 <i>Remark by HFG: New appropriate rates and prices (R+P), if the Provisional Sum does not refer to BoQ-quantities and unit rates. Variations with new rates and prices should monitored as well here – for Transparency reasons.</i>	xxx	14.3 (vii)	<i>To monitor the Provisional Sums PS (BoQ, non-defined items as Provisional Sums gives more clarity about the scope of “appropriate” new rates and prices extent (Transparency)</i>
Any amount to be added for release of Retention Money under SC14.9 [Release of Retention Money]	xxx	14.3 (viii)	<i>The release also applies for Sections and parts “put into use”</i>
Any amount to be deducted for the Contractor’s use of utilities provided by the Employer under SC04.19 [Temporary Utilities] <i>e.g. Electricity, Water and Gas</i>	xxx	14.3 (ix)	<i>Gives an idea about the consumption and more clarity: 36 months village illuminated.</i>
minus amounts certified in previous Payment Certificates	14.3 (g)	14.3 (x)	and PAID !