



CLAIMS CLASS

MODULE 6

Commencement, Delays and Completion

VIDEO 3

**Outstanding Work, Defects, Performance Certificate,
Tests After Completion**

Clause 11 – Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

- Defects shall be notified to the Contractor
- The Contractor shall:
 - Complete any work which is outstanding at Taking-Over
 - Remedy defects or damage by the expiry of the Defects Notification Period

Clause 11 – Defects Liability

11.2 Costs of Remedying Defects

- The cost of completing outstanding work and remedying defects is to be borne by the Contractor
- If the work is attributable to any other cause, the Contractor shall be notified
- If applicable, the work shall be treated as a variation

Clause 11 – Defects Liability

11.4 Failure to Remedy Defects

- If the Contractor fails to remedy any defect within a reasonable time, a date may be fixed by which the defect or damage is to be remedied
- The Contractor shall be given notice of this date
- If the Contractor fails to remedy the defect by the notified date, the Employer may arrange for the work to be carried out by others
- The Contractor shall pay the Employer's costs in doing so
- If the defect prevents the Employer from receiving substantial benefit, the Employer may terminate and recover any sums paid for the works in question, plus additional costs incurred

Clause 11 – Defects Liability

11.6 Further Tests

- If the remedying of defects may affect the performance of the Works, the Engineer, by notice, may require the repetition of tests
- The tests shall be carried out in accordance with the terms applicable to the previous tests

Clause 11 – Defects Liability

11.8 Contractor to Search

- If required, the Contractor shall search for the cause of any defect

Clause 11 – Defects Liability

11.9 Performance Certificate

- Performance of the Contractor's obligations is not completed until the Engineer has issued the Performance Certificate
- The Performance Certificate shall state the date on which the Contractor completed his obligations
- The Engineer shall issue the Performance Certificate within 28-days after the expiry dates of the Defects Notification Periods
- The Performance Certificate may be withheld if the Contractor has not supplied all the Contractor's Documents, or completed and tested all the Works, including remedying any defects
- Only the Performance Certificate shall be deemed to constitute acceptance of the Works

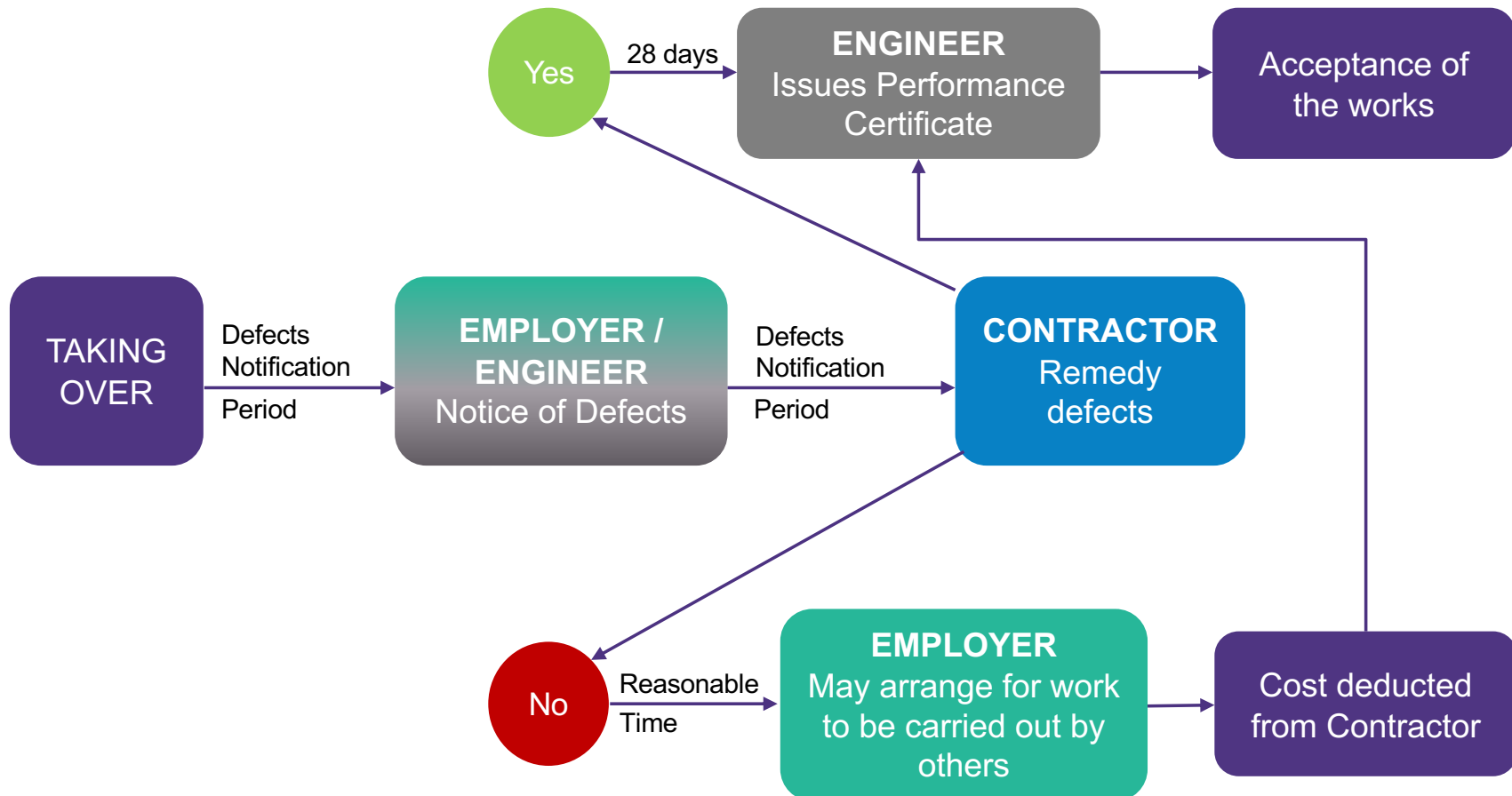
Clause 11 – Defects Liability

11.11 Clearance of Site

- The Contractor shall remove Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works within 28-days of receipt of the Performance Certificate
- In the case of failure of the Contractor, the Employer may dispose of such items at the cost of the Contractor

Clause 11 – Defects Liability

Defects Liability Process



Clause 12 – Tests After Completion (Yellow Book)

12.1 Procedure for Tests After Completion

- Tests after Completion are carried out by the Employer to verify that the project still complies with performance requirements
- For these provisions to be applicable, Tests After Completion need to be specified
- The Employer shall:
 - Provide all electricity, equipment, fuel, instruments, labour, materials and suitably qualified and experienced staff
 - Carry out the Tests after Completion in accordance with the manuals and guidance provided by the Contractor
 - Give the Contractor notice of the date when the Tests after Completion will be carried out

Clause 12 – Tests After Completion (Yellow Book)

12.1 Procedure for Tests After Completion

- If the Contractor does not attend, the Employer may proceed and the Contractor shall accept the results
- The Employer and Contractor shall jointly compile and evaluate the results

Clause 12 – Tests After Completion (Yellow Book)

12.2 Delayed Tests

- If the Contractor incurs Cost attributable to the Employer, he shall give notice and be entitled to the payment of Cost plus reasonable profit
- The Engineer shall agree or determine the matters
- If the tests cannot be completed within the Defects Notification Period for reasons not applicable to the Contractor, the works shall be deemed to have passed

Clause 12 – Tests After Completion (Yellow Book)

12.4 Failure to Pass Tests after Completion

- If the following applies:
 - The Works or a Section fail the tests
 - Compensation is defined in the Contract
 - The Contractor pays the compensation
- The tests will be deemed to have passed

Clause 12 – Tests After Completion (Yellow Book)

12.4 Failure to Pass Tests after Completion

- If the tests cannot be completed within the Defects Notification Period due to lack of access, the works shall be deemed to have passed
- If the Contractor incurs Cost attributable to the Employer, he shall give notice and be entitled to the payment of Cost plus reasonable profit