



Variations

What is a variation?

A variation (sometimes referred to as a Variation Order VO) is a change to the work originally specified in the contract, whether by way of an addition, omission, or substitution to the works, or through a change to the way the works are to be carried out. Whilst some variations are unavoidable, it is wise to minimise potential variations and subsequent claims by ensuring that uncertainties are eliminated before awarding the contract.

How often do they happen?

Almost all construction projects vary from the original design, scope, and definition. Whether small or large, construction projects will inevitably depart from the original tender design, specifications and drawings prepared by the design team. Whilst some variations are unavoidable, it is wise to minimise potential variations and subsequent claims by ensuring that uncertainties are eliminated before awarding the contract. Although Variations and variation orders are common in construction projects followed by VO claims most of the time contractors struggle to get fair valuation for their variation claims as their expenses for the extra works are more than what they are get paid.

Why do they happen?

This can be because of technological advancement, statutory changes or enforcement, change in conditions, geological anomalies, non-availability of specified materials, or simply because of the continued development of the design after the contract has been awarded. In large civil engineering projects variations can be very significant, whereas on small building contracts they may be relatively minor.

What do the variations include?

Alterations to the design, quantities, quality, working conditions or sequence of work. They cannot however (without the contractor's consent) include changes in the fundamental nature of the works, omitting work so that it can be carried out by a different contractor or be instructed after practical completion.

Can it affect a completion date and cost of the contract?

Yes, variations may not only give rise to additions or deductions from the contract sum but may also require adjustment of the completion date (EOT). The valuation of variations may include not just the work which the variation instruction describes, but other expenses that may result from the variation, such as the impact on other aspects of the works.

How are they valued?

Valuation of variations plays an important role in variation claim procedure. At this stage, it also can be a dispute for the contract.

- Agreement between the contractor and the client.
- The cost consultant.
- A variation quotation prepared by the contractor and accepted by the client.
- By some other method agreed by the contractor and the client.

Valuations of variations are often based on the rates and prices provided by the contractor in their tender, provided the work is of a similar nature and carried out in similar conditions. This is true, even if it becomes apparent that the rates provided by the contractor were higher or lower than otherwise available commercial rates. When there is a variation to the works and once it is instructed in writing, the contractor needs to carry out the work as per instructions. After the work is completed, he needs to submit his variation claim at the time when he submits the progress claim. Together with his claim, it is necessary to submit the necessary documents and details to support his claim.

Source of conflict

Conflict can arise when work is not mentioned in the bills of quantities, drawings, or specifications. In common law this silence does not mean the contractor has an automatic right to claim for extra payment. The client is not bound to pay for things that a reasonable contractor must have understood were to be done but which happen to be omitted from the bills of quantities.

What is the process of handling variations?

- identifying variations to the contract
- issuing variation order instructions
- carrying out variation work as in variation order
- preparation and submission of variation claim
- Valuation of variations