

ICC FORCE MAJEURE CLAUSE (“Clause”)

1 Definition

“Force Majeure” means the occurrence of an event or circumstance (“Force Majeure Event”) that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (“the Affected Party”) proves:

- a) that such impediment is beyond its reasonable control; and
- b) that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
- c) that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

2 Non-performance by third parties.

Where a contracting party fails to perform one or more of its contractual obligations because of default by a third party whom it has engaged to perform the whole or part of the contract, the contracting party may invoke Force Majeure only to the extent that the requirements under paragraph 1 of this Clause are established both for the contracting party and for the third party.

3 Presumed Force Majeure Events.

In the absence of proof to the contrary, the following events affecting a party shall be presumed to fulfil conditions (a) and (b) under paragraph 1 of this Clause, and the Affected Party only needs to prove that condition (c) of paragraph 1 is satisfied:

The Presumed Force Majeure Events commonly qualify as Force Majeure. It is therefore presumed that in the presence of one or more of these events the conditions of Force Majeure are fulfilled, and the Affected Party need not prove the conditions (a) and (b) of paragraph 1 of this Clause (i.e. that the event was out of its control and unforeseeable), leaving to the other party the burden of proving the contrary. The party invoking Force Majeure must in any case prove the existence of condition (c), i.e. that the effects of the impediment could not reasonably have been avoided or overcome.

- a) war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilisation;
- b) civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy;
- c) currency and trade restriction, embargo, sanction;
- d) act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation;
- e) plague, epidemic, natural disaster or extreme natural event;
- f) explosion, fire, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy;

g) general labour disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

4 Notification.

The Affected Party shall give notice of the event without delay to the other party.

5 Consequences of Force Majeure.

A party successfully invoking this Clause is relieved from its duty to perform its obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the other party. The other party may suspend the performance of its obligations, if applicable, from the date of the notice.

6 Temporary impediment.

Where the effect of the impediment or event invoked is temporary, the consequences set out under paragraph 5 above shall apply only as long as the impediment invoked prevents performance by the Affected Party of its contractual obligations. The Affected Party must notify the other party as soon as the impediment ceases to impede performance of its contractual obligations.

7 Duty to mitigate.

The Affected Party is under an obligation to take all reasonable measures to limit the effect of the event invoked upon performance of the contract.

8 Contract termination

Where the duration of the impediment invoked has the effect of substantially depriving the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the impediment exceeds 120 days.

9 Unjust enrichment

Where paragraph 8 above applies and where either contracting party has, by reason of anything done by another contracting party in the performance of the contract, derived a benefit before the termination of the contract, the party deriving such a benefit shall pay to the other party a sum of money equivalent to the value of such benefit.

ICC HARDSHIP CLAUSE (“Clause”)

1. A party to a contract is bound to perform its contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.
2. Notwithstanding paragraph 1 of this Clause, where a party to a contract proves that:
 - a) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and that
 - b) it could not reasonably have avoided or overcome the event or its consequences, the parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.

3A Party to terminate	3B Judge adapt or terminate	3C Judge to terminate
Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided in that paragraph, the party invoking this Clause is entitled to terminate the contract but cannot request adaptation by the judge or arbitrator without the agreement of the other party.	Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided for in that paragraph, either party is entitled to request the judge or arbitrator to adapt the contract with a view to restoring its equilibrium, or to terminate the contract, as appropriate.	Where paragraph 2 of this Clause applies, but where the parties have been unable to agree alternative contractual terms as provided in that paragraph, either party is entitled to request the judge or arbitrator to declare the termination of the contract.