

EXPLANATION OF TERM 'WITHOUT PREJUDICE

PAYMENTS OF MONIES DUE CONTRACTORS: WHEN AND HOW SAME MUST BE MADE UNDER THEIR CONTRACT BETWEEN GHANA FIRST COMPANY LIMITED AND CONTRACTORS.

1. Although the ultimate goal of every contractor in executing the construction of clean Ghana sanitation facility contract document is payment of money, it must be pointed out that, the said goal can only be achieved based on the contents of the contract document between Ghana First Company Limited and that contractor.
2. This is because the contract between Ghana First Company Limited and all the contractors is a legal document and as such all payments and when they must be made must also be governed by the contents of the contract.
3. In this regard, in ascertaining when the contractors are to be paid and how much they are to be paid, requires that reference is made to the contents of the contract and nothing more since the contract was reduced into writing and has been signed by both Ghana First Limited and all the contractors.
4. Since all matters bothering on ***“contract and quantum sum”*** have already been explained above, this further explanation on payments is proceeding on the assumption that the explanation on those matters have been understood.
5. The relevant clause dealing with payments due to contractors from Ghana First Company Limited is captured in clause 39 of the contract. However clause 39 of the contract also makes reference to paragraph 5 (iv). Therefore in order to get a better understanding of clause 39 of the contract, paragraph 5(iv) also needs to be explained.
6. It must be observed that paragraph 39 of the contract opens with the words ***“ without prejudice to clause 5 v of the contract agreement.....”***. The basic explanation which can be given to these words is that clause 39 does not affect the contents and legal effects of clause 5v. In other words, notwithstanding paragraph 39 of the contract, clause 5v has not been taken off but is

still effective or operational! If clause 5v is still operational, the question is, what is paragraph 5v really about?

7. Clause 5 (iv) states that the contract between Ghana First Company Limited and the Contractors is **“A TURN KEY PROJECT AND THAT THE CONTRACTOR SHALL BE PAID ONLY UPON FULL COMPLETION AND HAND OVER THE ENTIRE PROJECT”**.

8. Clause 5 (iv) means that the contract is a turn key project. **A turn key contract in simple terms means a contract in which the contractor is only paid upon the successful completion of an awarded project on agreed sum and the contractor has handed over the project to the owner.**

Therefore paragraph 5 (iv) quoted above defines what is meant by a turn key project. It is a project in which the contractor can be paid only after he/she has completed the project and handed over the same to Ghana First Company Limited.

9. Therefore the meaning of the phrase, “ *without prejudice clause 5...*” as captured in paragraph 39 of the contract means that, notwithstanding the fact that the entire project is a turn key one and the contractor can be paid only upon a successful completion of the project and has handed over the keys to Ghana First Company Limited, Ghana First Company Limited still reserves the rights to pay 60% Of the quantum sum when the project has been completed and has been subjected to inspection by the relevant persons and are awaiting to be paid.

10. What must also significantly be noted is that, the contract exclusively conferred the right to pay the quantum sum at this juncture on Ghana First Company Limited. This means that Ghana First Company Limited reserves the right to pay or not to pay the quantum sum before the contractor has handed over the keys to Ghana First Company Limited.

11. What must be observed is that, paragraph 39 of the contract does not stand in isolation but must be interpreted in conjunction with paragraph 5 (iv) otherwise a wrong impression would

be created that upon the completion of 60% of the project, Ghana First Company Limited owes an obligation to pay the contractor 60% of the contract or quantum sum.

12. Flowing from the above discussion therefore, the correct interpretation of paragraph 39 of the contract is that:

- a. The entire project between Ghana First Company Limited and all the contractors is a **turn key project** and that payments of such projects by Ghana First Company Limited would ONLY be made upon a successful completion of the project and the same handed over to Ghana First Company Limited in accordance with the bill of quantities.
- b. However, in some circumstances where the contractor has completed the project and is in the process of handing it over (within the awaiting period of three months), Ghana First Company Limited reserves the right to pay 60% of the quantum sum provided there are no defects in the project.
- c. Anything other than this interpretation is a wrong assumption of facts which do not reflect the contents of the contract between Ghana First Company Limited and the contractors.