



**In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar**

Neutral Citation: [2025] QIC (F) 34

**IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT**

Date: 1 August 2025

CASE NO: CTFIC0042/2024

THALES QFZ LLC

Claimant

v

ALJABER ENGINEERING COMPANY W.L.L

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. The Sub-Contract is terminated forthwith.
2. Return of the Performance Guarantee to the Claimant forthwith.
3. The Defendant's Counterclaim is dismissed.
4. The Defendant is to pay the Claimant the following within 14 days of the date of this judgment:
 - i. QAR 3,739,875.09 (Approved Works by the Defendant).
 - ii. QAR 2,366,645.41 (Works completed but not approved by the Defendant).
 - iii. QAR 500,000 (damages for delay in payment).
 - iv. QAR 1,771,582.92 (damages for loss of profits).
 - v. QAR 7,614.89 (damages for the cost of extending the Performance Guarantee).

Total: QAR 8,385,718.31

5. The Defendant is to pay the Claimant's costs of and incidental to these proceedings, to be assessed by the Registrar if not agreed.

Judgment

Background

1. The Claimant, Thales QFZ LLC (the '**Claimant**' or '**Thales**'), is a limited liability company incorporated in the Qatar Free Zones ('**QFZ**') in accordance with Law No. 34 of 2005 on Investment Free Zones. It carries on business as a contractor, among other things, in defence and security, ground transportation, aerospace, and space and digital identity.
2. The Defendant, AlJaber Engineering Company W.L.L (the '**Defendant**' or '**AlJaber**'), is a company with limited liability incorporated in accordance with the laws of the State of Qatar. It is listed in the commercial registry of the Ministry of Commerce and Industry. It carries on business as a contractor in the field of major construction and contracting.

3. As explained in more detail below, the dispute arises from a sub-contract dated 29 January 2022 between the Claimant and the Defendant (the ‘**Sub-Contract**’) for security equipment and system integration works at the New Port Strategic Food Security Facilities at the Hamad Port, Qatar (the ‘**Project**’).
4. The Sub-Contract was for QAR 13,250,000 (the ‘**Contract Price**’) with an agreed time for completion of 275 days. The Defendant, as the main contractor, was responsible for fulfilling a contract with the government of the State of Qatar represented by the New Port Project Steering Committee (the ‘**Employer**’).
5. The Claimant’s case is that it performed work under the Sub-Contract from 29 January 2022 until its termination on 10 February 2023. The Claimant highlights, as a striking feature of the dispute, that the Defendant has made no payment whatsoever against the Contract Price. The Defendant denies any liability to the Claimant and advances a Counterclaim.
6. The Claim Form was issued on 3 October 2024. On 29 October 2024, the Defendant demanded payment under a Performance Guarantee (defined at paragraph 36 below) issued under the Sub-Contract, claiming that the Claimant was in breach of its obligations under the Sub-Contract. According to the demand letter, the demand was made on the basis that:

...the Applicant [i.e. the Claimant] is in breach of its obligations under the underlying relationship as it has failed to perform the works under the contract. As a result, the contract has been terminated.
7. The Defence and Counterclaim was served on 3 November 2024. On 20 November 2024, following an urgent ex parte application, this Court (Justice Fritz Brand) issued a judgment giving its reasons for issuing an interim injunction preventing the Defendant from liquidating the Performance Guarantee ([2024] QIC (F) 55). The return date for that injunction was 17 November 2024.
8. On 28 November 2024, following the return hearing, the Court (Justice Fritz Brand) issued a further judgment continuing the injunction granted on 20 November 2024. The injunction was granted and continued on the basis that the Court was satisfied that the Defendant’s demand for payment was prima facie fraudulent.

9. At paragraph 11 of the 20 November 2024 judgment, the Court stated:

Applying these principles to the facts, I also find myself in agreement with the Applicant's further contention that on the papers, it had been established, at least prima facie, that the demand by Respondent which the Applicant sought to restrain, had been fraudulently made. I say that mainly because of the inherent conflict between the allegations relied upon by Respondent in the letter of demand on the one hand, and in the Defence and Counterclaim on the other. According to the Defence and Counterclaim, the Sub-Contract is still in existence and on that basis it is claimed that the Applicant be compelled to maintain the Performance Guarantee until completion of the contract. By contrast, the whole basis relied upon in the letter of demand is that the contract had been terminated by reason of the Applicant's breach.

10. At paragraph 12 it continued:

As I see it, a further reason to think that the allegation of termination, which is fundamental to the demand, was to the Respondent's knowledge unfounded, arises from the fact that the Applicant had suspended its work under the Sub-Contract in January 2023 and purported to terminate the contract in February 2023. Yet, no attempt was made by the Respondent to call on the Performance Guarantee. It was only after the Claim Form was filed and shortly before the Defence was due that the demand was made. This, I believe, is another indication that the Respondent never thought that the Sub-Contract had been terminated. It was only after litigation proved to be inevitable that it made the demand on the basis of allegations it knew to be unfounded so as to gain a tactical advantage in the course of the litigation.

11. The Defendant was ordered to pay the costs incurred by the Claimant in the application, including the costs of the hearings of 7 November 2024 and 17 November 2024.

12. On 2 December 2024, the Claimant served its Reply and Defence to Counterclaim.

13. On 30 December 2024, the Court gave directions for trial.

14. The trial was initially fixed for 11 February 2025. Apart from the hearing bundle, the evidence at trial for the Claimant consisted of the witness statement dated 20 January 2025 of Mr Graeme Perry, the Claimant's Senior Contracts Manager since 2019. The Defendant relied upon the witness statement of Mr Fawaz Nakhoul dated 20 January 2025. He succeeded Mr Nader Quronfuleh as Project Director of the Defendant around the end of August 2022.

15. The trial took an unexpected course on 11 February 2025. The Claimant opened its case, but it became necessary to adjourn the trial. The reasons for this are set out in the Court's judgment of 3 March 2025 ([2025] QIC (F) 10). In short, the principal reason for the adjournment was the non-attendance of the law firm initially acting for the Defendant (no longer acting in this matter). Initially, it appeared that the trial could take place with the Defendant acting in person, but having heard the Claimant's opening submissions, it became apparent that an adjournment was necessary in the interests of justice.
16. The trial was scheduled to resume on 27 April 2025 by way of a virtual hearing. However, on that date, the Defendant made a further application to adjourn. By this time, the Defendant had changed its legal representatives. The application was made on the basis that the Defendant's sole witness had recently been detained and was therefore unable to give evidence. The Claimant did not oppose the application, and the trial was accordingly relisted.
17. Reflecting the fact that the adjournments were not attributable to the Claimant, the Court ordered the Defendant to pay the Claimant's costs of and occasioned by the adjournments on 11 February 2025 and 27 April 2025 (the '**Adjournments**'). These costs were subsequently assessed by the Court in a judgment dated 22 May 2025 ([2025] QIC (F) 24).
18. The trial resumed in-person on 17 June 2025. The Claimant having already made its opening submissions on 11 February 2025, the Court heard opening submissions from the Defendant. Mr Perry and Mr Nakhoul confirmed their respective witness statements and were cross-examined. Closing oral submissions were made by the parties.
19. The Court directed an exchange of submissions on a legal issue relating to termination. These were served by the Claimant and the Defendant on 25 June 2025 and 1 July 2025, respectively.

The facts

20. This section provides a summary of the relevant facts of the dispute and sets out the contractual framework. It is not exhaustive, but offers the general factual background and context for the Court's analysis.

21. On 17 January 2022, the Defendant issued a Letter of Award ('**LOA**') for the Project, which was countersigned by the Claimant on 19 January 2022. In the LOA, the Defendant confirmed its intent to award a contract to the Claimant for various works specified therein.
22. The LOA described payments to be made through two different processes:
- i. The first (LOA clause 5(i)) related to an advance payment of QAR 1,000,000 (the '**Advance Payment**') payable 45 days from the date of the Claimant issuing a commercial invoice, along with an Advance Payment Bank Guarantee ('**APBG**') from a reputable bank in Qatar. This Advance Payment would be amortised through 15% deductions in Payment Certificates.
 - ii. The second (LOA clause 5(ii)) related to monthly progressive payments to be paid 45 days from the date of receipt by the Defendant of an invoice for the executed works which it accepted.
23. As mentioned above, and as contemplated in the LOA, the Claimant and Defendant entered into the Sub-Contract for the design, engineering, supply, installation, testing, commissioning and handing over of security equipment and system integration works (the '**Works**') for the Project. The Sub-Contract was signed on 19 April 2022 with a commencement date of 29 January 2022.
24. The Defendant was the main contractor on the Project, having entered into a contract for works with the Government of the State of Qatar, represented by the Employer under contract package number NPP/0085 (the '**Main Contract**').
25. The Project was to be developed and constructed on an area of approximately 53 hectares (about 530,000 square metres). The Project website states the following:

The project consists of specialized facilities for the processing, manufacturing and refining of rice, raw sugar and edible oils. These products will be available for local, regional and global use. The project also includes bulk storage silos with their associated infrastructure and conveyance equipment, in addition to the fundamental structures fully equipped for the project associated operations of handling, processing, packaging, reloading and transport. One more feature of the project will be a specialized facility for the recycling of waste products arising from the processing of basic commodities to create regulatory compliant

animal feed and food stocks. Those facilities will operate as a fully functional standalone terminal, while 500 meters of the wharf of the port will be dedicated for the berthing and discharging of the ships.

26. The Sub-Contract consists of the following documents, listed in order of priority as set out in clause 3.3 of the General Conditions of Sub-Contract (the ‘**General Conditions**’ or ‘**GC**’):

- i. Sub-Contract Agreement.
- ii. Particular Conditions of Sub-Contract (‘**Particular Conditions**’ or ‘**PC**’).
- iii. General Conditions.
- iv. 13 Schedules.

27. Pursuant to clause 1.1.31 of the Sub-Contract, as set out in the Particular Conditions, the Contract Price as defined is a lump sum of QAR 13,250,000.

28. Pursuant to clause 1.1.41 of the Particular Conditions, the Time for Completion for the Works was 275 days, commencing on 29 January 2022 (clause 1.1.35).

29. It is necessary to set out the payment terms before looking at the Advance Payment process.

30. The payment provisions are principally to be found at General Condition 16, subject to some amendments in the Particular Conditions.

31. In particular:

- i. General Conditions clauses 16.1.1(d) and (e) have been deleted by the Particular Conditions.
- ii. General Conditions clause 16.3.1 has been deleted and substituted for text which appears in the Particular Conditions:

The Contractor shall make monthly progressive payments to the Sub-Contractor after 45 days from the date of Certification by the Contractor of the Sub-Contractor's invoice(s) for the executed Works and delivered materials subject to Engineer's acceptance and approval as per the milestone payment Schedule

indicated in Schedule 7 Annexure 1. [This removes the ‘pay when paid’ stipulation in the original wording.]

32. The General Conditions do not contain a clause 16.9. However, this clause has been added by the Particular Conditions. This clause sets out the Defendant’s obligation to make an Advance Payment to the Claimant. It is in these terms:

The Contractor shall make an Advance Payment to the Sub-Contractor for an amount of QAR 1,000,000 (Qatari Riyals One Million only) of the total Sub-Contract Price, payable (45) days from the date of the Sub-Contractor commercial invoice along with an APBG from a reputable bank in Qatar.

The Sub-Contractor shall ensure that the APBG is valid and enforceable until Advance Payment has been repaid in full.

The Advance Payment recovery is included in the Project Payment Milestones in Schedule 7 Annexure 1.

33. Schedule 7 contains the Bill of Quantities. There are two tables relating to payments:

- i. The first table is a copy of the table appearing at Appendix A of the LOA. It shows lump sum categories without preliminaries or OHP (Overheads and Profit).
- ii. The second table, a “*Project Payment Milestone*” table, allocates these lump sums across payment milestones (M0-M9), including an Advance Payment at M0.

34. Schedule 9 contains a pro forma Performance Security Bank Guarantee form.

35. Schedule 10 contains a pro forma APBG form.

36. Pursuant to clause 2.6.1 of the General Conditions, the Claimant was required to provide the Defendant with a performance security (or guarantee) in the amount of 10% of the Contract Price (the ‘**Performance Guarantee**’).

37. Accordingly, under cover of a letter dated 10 February 2022, the Claimant provided the Defendant with an irrevocable letter of guarantee dated 30 January 2022 issued by BNP Paribas under reference number 066911GQ2200069. The Performance Guarantee was stated to expire on 31 January 2023.

38. As pleaded in the Claim Form, the Claimant extended the Performance Guarantee on four occasions: (i) on 30 January 2023, until 30 April 2023, by way of Amendment No. 1; (ii) on 20 April 2023, until 31 October 2023, by way of Amendment No. 2; (iii) on 31 October 2023, until 30 April 2024, by way of Amendment No. 3; and (iv) on 1 May 2024, until 31 October 2025, by way of Amendment No. 4. The Performance Guarantee remained valid at the time of the filing of proceedings and has been maintained by the Claimant.
39. Under the Sub-Contract, the Defendant was required to pay the Claimant an Advance Payment in the amount of QAR 1,000,000 (clause 16.9 of the Particular Conditions). The Claimant obtained the APBG in the amount of QAR 1,000,000 (BNP Paribas Letter of Guarantee No. 06691IGQ2200070 dated 30 January 2022) as it was required under clause 16.9 of the Particular Conditions. It was submitted on 10 February 2022. The Claimant submitted its invoice on the same date.
40. The Works were to be completed by the Claimant according to nine Milestones set out in Schedule 7, Appendix 1 of the Sub-Contract, which sets out the “*Project Payment Milestone*” schedule. They were as follows:
- i. Milestone 1 - Design Verification.
 - ii. Milestone 2 - Procurement.
 - iii. Milestone 3 - Delivery.
 - iv. Milestone 4 - Head End Upgrade & Testing & Commissioning.
 - v. Milestone 5 - Local Area Network (‘LAN’) Integration & Testing & Commissioning.
 - vi. Milestone 6 - Security Systems Integration and Testing & Commissioning.
 - vii. Milestone 7 - Training.
 - viii. Milestone 8 - Handover.
 - ix. Milestone 9 - End of Defects Liability Period.

41. According to the Claimant, by the time the Sub-Contract was terminated, it had completed the Works in relation to Milestones 1 to 3, and completed part of the Works in relation to Milestones 4, 6 and 7 in accordance with the Sub-Contract. Due to the Defendant's alleged default under the Sub-Contract, the Claimant contends that it was prevented from completing the Works.
42. It is the Claimant's case that, notwithstanding its compliance with the Sub-Contract and completion of the Works to the extent that it was able, the Defendant has failed to make any payments due under the Sub-Contract.
43. Broadly, the Works fall into two categories:
- i. Approved Works: Works for which the Claimant contends payment is contractually due on the basis that it has satisfied the payment conditions under the Sub-Contract, and the Defendant has agreed to make payment.
 - ii. Non-Approved Works: Works carried out by the Claimant for which, as a result of the termination of the Sub-Contract, the contractual payment provisions were not fulfilled. For these Works, the Claimant seeks damages equivalent to the value of the work performed.
44. On 24 January 2023, the Claimant sent a letter to the Defendant stating that the Works were suspended “*until [the Claimant] had received Payment of monies due*” (the ‘**Suspension Notice**’).
45. The Claimant relied on article 191 of Qatar Law No. 22 of 2004 (the ‘**Qatar Civil Code**’). This provides:
- In contracts binding to both parties, if the corresponding obligations are outstanding, either party may decline to perform its own obligation unless the other party performs its own obligation, unless the parties agree otherwise or unless the practice provides otherwise.*
46. According to the Claimant, the Defendant did not respond to the Claimant's Suspension Notice. The Claimant served a notice of termination on the Defendant on 5 February 2023 (the ‘**Notice of Termination**’) which stated, inter alia, as follows:

As a result of the Contractor's continued breach of its obligation by not making a single payment to the Sub-Contractor for works duly completed in such a manner consistent with the requirements of good faith, the Sub-Contractor has no alternative other than to serve 14 days' Notice of Termination of this Sub-Contract Agreement No. 383/SC/101/2 effective from 05 February 2023 in accordance with the Sub-Contractor's rights and remedies under the Sub-Contract and at Law.

47. On 13 February 2023, the Claimant received a notice from the Employer (issued to all sub-contractors on the Project) informing it that the Main Contract had been terminated with immediate effect.

48. On 20 February 2023, the Claimant wrote to the Defendant confirming the termination of the Sub-Contract stating, inter alia, as follows:

Reference is made to the Notice of Termination issued under cover of letter ref; LTR-TQFZ-JEC-0070 dated 05 February 2023, by the Sub-Contractor to the Contractor as a result of the Contractor's continued breach of its obligations under Sub Clause 16.3.1 [Time for Interim Payments] and 16.9 [Advance Payment], Fourteen (14 days) has now elapsed from the issue of the Sub-Contractor's Notice of Termination, and in the absence of any formal response from the Contractor, Sub-Contract Agreement No. 383/SC/010/22 has formally terminated on 20 February 2023 on the grounds of the Contractor's continued breach of its obligations under Sub Clause 16.3.1 [Time for Interim Payments] and 16.9 [Advance Payment].

49. On 20 February 2023, the Defendant responded, stating that it disagreed with the contents of the Claimant's letters of 24 January 2023, 5 February 2023, and 20 February 2023, and requested the Claimant to "hold this Contract Termination for further 2 weeks." The Defendant went on to state that:

...by that time a solution on the ongoing issues between the Sub-Contractor and Contractor will be agreed and the Works related to the Sub-Contract will be restarted as per the terms of Sub-Contract Agreement.

50. By way of a further notice to all sub-contractors sent by the Employer dated 19 March 2023, the Claimant was informed that the termination of the Main Contract had been rescinded temporarily, and that confirmation of the status of the Main Contract would be provided by the Employer within two months. The Claimant contends that it never received such confirmation.

51. The parties continued to discuss the termination of the Sub-Contract and the amounts owed by the Defendant to the Claimant. In particular, on 19 April 2023, the parties met at the Defendant's premises to discuss the matter of outstanding payments owed to the Claimant. At this meeting, the parties agreed that the Defendant would issue a payment plan together with a revised schedule of work to be completed by the second week of May 2023. The Defendant failed to issue a payment plan for consideration by the Claimant. The parties met again on 27 May 2023, but no payment plan was made available at the meeting for discussion between the parties, and the issue of the amount owed to the Claimant remained unresolved.

Jurisdiction and governing law

52. By sub-clause 3.2 of the Particular Conditions, the governing law of the Sub-Contract is the law of the State of Qatar.

53. Clause 20.1 of the General Conditions provides:

If a dispute of any kind whatsoever arises between the Contractor and Sub-Contractor in connection with, or arising out of the Sub-Contract, whether during the execution of the Sub-Contract Works or after their completion and whether before or after repudiation or other termination of the Sub-Contract, then the Contractor or the Sub-Contractor may give a notice of such dispute to the other Party, in which case the Parties shall attempt for the next sixty (60) days to settle such dispute amicably.

54. Clause 20.2 of the General Conditions states:

If any dispute or difference shall arise between the Contractor and the Sub-Contractor in connection with or arising out of the Sub-Contract, and not resolved amicably within the specified period under Sub-Clause 20.1, any Party may refer such dispute or difference to be settled by the Qatari competent Court of Justice.

Any such reference to the Court as aforesaid shall not in any way vitiate or invalidate the Sub-Contract, neither shall it be grounds for the Sub-Contractor to cease the Sub-Contract Works, and the Sub-Contractor shall proceed with the performance of the Sub-Contract Works with all due diligence.

All such references as aforesaid shall be governed by the laws of the State of Qatar and all judicial proceedings shall take place in the State of Qatar.

55. The “Qatari competent court” mentioned in clause 20.2 of the General Conditions is the Qatar Financial Centre (the ‘QFC’) Civil and Commercial Court pursuant to article

44 of Law No. 34 of 2005 on Investment Free Zones as amended by Qatar Law No. 15 of 2021 (the ‘**Free Zone Law**’), which states that:

The Civil and Commercial Court established in the Qatar Financial Centre pursuant to the Law of the Qatar Financial Centre, as referred to herein, shall have jurisdiction to adjudicate all disputes and civil and commercial suits between Registered Companies in the Free Zones, and between the Authority and individuals and Registered Companies in the Free Zones, or between Registered Companies in the Free Zones as one party and between individuals residing in the State or companies or entities established outside the Free Zones as the other party, whatever the nature of the legal relationship which is the subject matter of the dispute, unless the parties agree to settle the dispute by alternative means.

56. The Claimant is registered in the Ras Bufontas Free Zone in Doha, Qatar which falls within the definition of a “Free Zone” under the Free Zone Law:

...a geographic area of the State’s territory, with defined space and boundaries, designated for the exercise of economic activities, and is considered to be outside the customs zone of the State.

57. Further, the Claimant is a “Registered Company” as defined in the Free Zone Law:

The companies and other entities registered with the Authority to carry out an Economic Activity within the Free Zone in accordance with the provisions of this Law and the decisions issued in implementation thereof.

58. This dispute is between a Registered Company in a Free Zone as one party and a company established outside of a Free Zone as the other, and therefore falls within the jurisdiction of this Court.

The Disputes

59. The Court turns to the various claims made by the parties.

The Claimant’s claims

60. The claims that the Claimant advances are as follows:

- i. Non-payment of Approved Works: the Claimant contends it performed Works up to Milestone 3 and partially completed Milestones 4, 6, and 7. The Defendant approved Works worth QAR 3,739,875.09 but failed to make payments (including an Advance Payment of QAR 1,000,000).

- ii. Non-payment of Non-Approved Works: the Claimant contends it performed Works worth QAR 2,366,645.41 that were not approved for payment by the Defendant.
- iii. Breach leading to suspension and termination: it is alleged that the Defendant's failure to make payments led to a suspension of work on 24 January 2023, followed by termination of the Sub-Contract on 20 February 2023.
- iv. Performance Guarantee dispute: the Claimant provided a Performance Guarantee of QAR 1,325,000, which it has maintained. The Defendant attempted to liquidate the security on 17 October 2023, despite termination of the contract. The Claimant claims the cost of maintaining the Performance Guarantee.
- v. Compensation for late payment: the Claimant seeks QAR 500,000 as compensation for the delays.
- vi. Loss of Profit Claim: due to the termination, the Claimant claims it was unable to complete Works worth QAR 7,143,479.50. The estimated lost profit amounts to QAR 1,771,582.92.

61. In summary, the relief sought by the Claimant is as follows:

- i. Payment of QAR 3,739,875.09 for Approved Works.
- ii. Payment of QAR 2,366,645.41 for Non-Approved Works.
- iii. QAR 500,000 for late payment.
- iv. QAR 1,771,582.92 for lost profit.
- v. Return of the Performance Guarantee or injunction against its liquidation and recovery of fees paid in the amount of QAR 7,614.89.
- vi. A declaration confirming the lawful termination of the Sub-Contract.

Defence and Counterclaim

62. The Defendant argues that the Claimant was in breach of contract. In summary, it contends that the Claimant failed to comply with proper invoicing and documentation procedures, making its payment claims invalid.

63. The Defendant filed a Counterclaim, arguing that:

- i. The Sub-Contract was not lawfully terminated by the Claimant.
- ii. The Claimant abandoned the Project, forcing the Defendant to hire alternative sub-contractors at a higher cost. It claims that it is entitled to recover additional costs for completion of the Claimant's scope of work amounting to QAR 7,084,684.15.

Interim payments

64. The Court turns to the dispute concerning the requirements for interim payments. Although the position may appear to be somewhat complicated, the principal basis on which the Claimant's claim is based is the contention that the Defendant admitted and agreed that sums were due to the Claimant but failed to pay anything to the Claimant.

65. By General Conditions 16.1.1 and 16.1.2, the Claimant was required to issue monthly statements "*in a form approved by the Contractor*" showing the amount that it considered itself entitled to receive up to the end of that month, and which enclosed any substantiating documents as required by the contractor and the engineer (defined in the Sub-Contract as "*a person or company appointed by the Employer to act on behalf of the Employer for the purposes of administering any part of the Main Contract*") (the '**Engineer**').

66. The parties did not agree upon any particular form of payment submission. It is the Claimant's case that the Defendant did not ask the Claimant to provide further documentation to support its payment submissions. Further, it contends that there were no communications from the Engineer to the Claimant seeking such information, and the Claimant invites the Court to infer that he did not raise any such requests to the Defendant.

67. Particular Condition 16.3.1 is referred to above. It is a provision that substitutes the original wording of General Condition 16.3.1 under which the Claimant's entitlement to receive monies would have been on a "*pay when paid*" basis.
68. The Court considers the position on monthly statements is as follows.
69. First, the Claimant was entitled to issue to the Defendant monthly statements. General Condition 16.1.1 imposed a cut-off date on the 25th day of each month but did not prohibit a submission by the Claimant at any other time. The implication in Condition 16.1 is that any payment submissions by the Claimant made on other dates might be aggregated with the Defendant's own payment submission under the Main Contract for which the Engineer's approval would be sought. However, the contracts were not formally linked, and the Defendant was required to process the Claimant's interim payment submissions regardless of its own obligations/entitlements under the Main Contract.
70. Second, at no time did the Defendant specify the form in which it wanted to receive the monthly statements, and never asked for supporting documentation.
71. Third, the Court agrees with the Claimant's submission that it was in the hands of the Defendant as to whether or not to pass a payment submission from the Claimant to the Engineer. The Defendant refused to make payment to the Claimant, and the Claimant does not know of the contacts between the Defendant and the Engineer.
72. Fourth, having approved payment, the Defendant was required to confirm it had done so by way of "*Certification by the Contractor*" of the Claimant's invoice. The term, although capitalised, is not a defined term. The Court accepts the Claimant's submission that the provision relates to communication of acceptance/approval by the Defendant, and this could come in any form. What was required was an intimation by the Defendant that payment was approved.
73. Finally, the Defendant was required to make payment of the certified sum by no later than 45 days from communicating its acceptance of the Claimant's payment submission. This was subject to General Condition 16.3.4 ("*In the event of the Contractor reducing, withholding or deferring any payment he shall notify the Sub-*

Contractor of his reasons as soon as is reasonably practicable”), but this provision was never invoked.

74. The Court proposes to consider the issues in relation to payment and termination under the following headings:

- i. Advance Payment.
- ii. Approved Payments.
- iii. Non-Approved Payments.
- iv. Termination.
- v. Claims.

Advance Payment

75. Under clause 16.9 of the Particular Conditions, the Defendant was required to pay the Claimant an Advance Payment in the sum of QAR 1,000,000 on or before 27 March 2022. The terms of clause 16.9 are stated above.

76. In accordance with the Sub-Contract, the Claimant provided the Defendant with an APBG (Guarantee No. 06691IGQ2200070) in the amount of QAR 1,000,000, which was stated to be enforceable until 31 July 2022.

77. The APBG was not extended beyond 31 July 2022 on the basis that payment of QAR 1,000,000 could no longer be considered an Advance Payment. That is because, pursuant to clause 16.9 of the Particular Conditions, the Advance Payment was to be paid 45 days from the date of the Claimant’s commercial invoice for the Advance Payment amount and the provision of the APBG.

78. Prior to entering the Sub-Contract, the parties had discussed the Advance Payment being recovered by the Defendant by way of deductions made against subsequent payment certificates; however, by the time of entering the Sub-Contract, the parties agreed that the Advance Payment would simply be paid as a Milestone payment and recovered in accordance with Schedule 7 to Appendix 1 of the Sub-Contract.

79. On 10 February 2022, the Claimant issued Invoice No. TQFZ-NPP0085/2022/01 for the sum of QAR 1,000,000 in relation to Milestone 0, and in accordance with the terms of clause 16.9 of the Particular Conditions. As such and in accordance with clause 16.3.1 of the Particular Conditions, this invoice was due for payment on or before 27 March 2022.
80. By 8 May 2022, the Claimant had still not received payment for Milestone 0, at which time such payment was 42 days overdue. The Claimant wrote to the Defendant requesting payment; however, the Defendant did not acknowledge receipt of or respond to the Claimant's letter. The Claimant wrote two further letters on 17 May 2022 and 30 May 2022, following up on payment for Milestone 0. No response was received from the Defendant.
81. In the Claimant's letter of 30 May 2022, the Claimant gave notice of its intention to suspend the Works, contending that the Defendant was in breach of the Sub-Contract.
82. On 20 June 2022, the Claimant's Country Director, Mr Frederic Sallet, met with a representative of the Defendant, Mr Amr Nadim, to discuss payment for Milestone 0.
83. During that meeting, Mr Nadim confirmed that payment for Milestone 0 would be made within 7 days (i.e. on 27 June 2022). He also confirmed that another of the Claimant's invoices in the amount of QAR 1,500,000 (Invoice No. TQFZ-NPP0085/2022/02 in respect of Milestone 2 (Procurement)) would be paid in the second half of July 2022. This was confirmed in an email from Mr Sallet to Mr Nadim on the same day. The Claimant's Invoice No. TQFZ-NPP0085/2022/02 is discussed in more detail below.
84. Despite such assurances, payment for Milestone 0 was not received on 27 June 2022. On that date, the Defendant responded to Mr Sallet's email by forwarding an internal email received from the Defendant's Chief Financial Officer, Mr Banan Serhan, on the same day and which stated the following: "*With regard to the QR 1 million advance; we shall do the transfer to them before the end of this week.*"
85. Notwithstanding the above, payment for Milestone 0 (QAR 1,000,000) was not received by the end of that week and has not been received by the Claimant to date. The Claimant sent several follow-up emails and a letter requesting payment. The Defendant failed to respond.

86. The failure of the Defendant to pay Milestone 0 is clear. At a meeting on 11 December 2022, the Defendant confirmed that payment for Milestone 0 and other invoices were certified and approved.

Approved Works

87. This section deals with Works in respect of which the Defendant approved the Claimant's invoices. It is proposed to consider the various Milestones.

Milestone 1: Design Review

88. The sum claimed for Approved Works is QAR 904,813.85. The work involved in Milestone 1 is set out in Mr Perry's witness statement at paragraphs 17-20.

89. On 26 July 2022, the Claimant issued Invoice No. TQFZ-NPP0085/2022/03 in the amount of QAR 902,709.15 in relation to its interim claim for Milestone 1.

90. The Defendant finally responded to that invoice on 11 October 2022, rejecting it. The Claimant, in turn, responded by way of a letter dated 13 October 2022. This letter dealt with a number of invoices.

91. On 26 October 2022, the parties met and the Defendant asserted that its ongoing failure to make payment was linked to cashflow difficulties. Despite some scepticism, Mr Perry agreed to hold on for payment and to reissue the invoice so as to (i) delete the Advance Payment amortisation, and (ii) amend the submission dates to reflect MAS and design approval dates. The reissued (and simplified) invoice was sent under cover of correspondence on 1 November 2022. In a letter dated 26 October 2022, the Defendant wrote to the Claimant that Invoice No. TQFZ-NPP0085/2022/01 "*has been certified*". The detail of the matters agreed are set out in Mr Perry's witness statement at paragraphs 22-26.

92. On 11 December 2022, the parties met at the Defendant's office. During that meeting, the Defendant confirmed that payment for Milestone 0 (now 910 days overdue) and the Claimant's Invoice No. TQFZNPP0085/2022/01 were certified and approved but that the Defendant was not able to confirm payment dates. The Claimant provided the Defendant with a record of the meeting as set out in the Claimant's letter dated 19

December 2022. Mr Perry in his witness statement at paragraph 29 refers to notes he made at the time. During the meeting, the Defendant said it approved values for Milestone 1 as set out in Mr Perry's witness statement at paragraph 32 as follows:

- i. LAN - QAR 62,162.84.
- ii. Video Surveillance System - QAR 68,834.59.
- iii. Access Control System - QAR 45,166.74.
- iv. IT Design/System Engineering - QAR 684,966.02.
- v. Gate Access System - QAR 43,683.66.

93. The revised invoice is for QAR 904,813.85. This agreed value was confirmed by the Claimant in a letter dated 19 December 2022, along with which it issued Invoice No. TQFZ-NPP0085/2022/03B for the agreed amount of QAR 904,813.85. The Defendant did not respond to the letter of 19 December 2022 and did not disagree with its contents. The Defendant has failed to pay Invoice No. TQFZ-NPP0085/2022/03B in respect of Milestone 1.

Milestone 2: Procurement

94. The Claimant contends that these are Approved Works. The sum claimed is QAR 1,644,997.25. It is covered in Mr Perry's witness statement at paragraphs 38-42.
95. On 16 June 2022, the Claimant issued Invoice No. TQFZ-NPP0085/2022/02 in the amount of QAR 1,512,390.33 in relation to the Claimant's interim claim for Milestone 2.
96. On 11 October 2022, the Defendant rejected the invoice on the basis that the invoice date was earlier than the material approval date, which was 2 August 2022. Furthermore, on 11 October 2022, the Defendant sent a second letter rejecting the Claimant's invoice on the basis that it was not submitted in accordance with the agreed Milestone under the Sub-Contract.
97. On 13 October 2022, the Claimant wrote to the Defendant setting out its disagreement with the Defendant's comments. On 26 October 2022, following a meeting held between the parties at the Defendant's office, the Defendant wrote to the Claimant highlighting various discrepancies in the Claimant's invoices.

98. It is not necessary to go into the detail of this, because the Defendant subsequently confirmed that these invoices (among others) would be certified. The Claimant issued its invoice for the value of QAR 1,644,997.25 as agreed with the Defendant.
99. On 11 December 2022, the parties met at the Defendant's office to discuss various disagreements on progress and values, and agreed a revised interim value of QAR 1,644,997.25. This is recorded in Mr Perry's notes of the meeting which state that the Defendant agreed to sign an invoice approval certification. The agreed value was confirmed by the Claimant in writing in a letter dated 19 December 2022.
100. The Defendant has failed to pay Invoice No. TQFZ-NPP0085/2022/02A in respect of Milestone 2.

Milestone 3: Delivery To Site

101. On 7 August 2022, the Claimant issued Invoice No. TQFZ-NPP0085/2022/04 in the amount of QAR 324,473.74 in relation to the Claimant's interim claim for Milestone 3 of the Works.
102. On 11 October 2022, the Defendant rejected the invoice on the basis that the materials claimed were returned to the Claimant for installation after the PMC inspection and therefore the Defendant could not validate the invoice. Further, on 11 October 2022, the Defendant sent a second letter rejecting the Claimant's invoice on the basis that it was not submitted in accordance with the agreed Milestone under the Sub-Contract.
103. On 13 October 2022, the Claimant wrote to the Defendant setting out its disagreement with the Defendant's comments.
104. On 26 October 2022, following a meeting held between the parties at the Defendant's office, the Defendant wrote to the Claimant highlighting various alleged discrepancies in the Claimant's invoices. However, the Defendant subsequently confirmed that the invoices, including the Design Verification invoice, would be certified.
105. As requested by the Defendant and notwithstanding the alleged discrepancies, the Claimant reissued its invoice for the value of QAR 352,923.72.

106. On 11 December 2022, the parties met at the Defendant's office and agreed a revised interim value of QAR 190,063.99, with the reduction assessed by the Defendant on the basis that equipment licences were not inspected.

107. As Mr Perry points out in his witness statement at paragraph 44, the Defendant agreed that the following elements of Milestone 3 would be paid:

- i. LAN – QAR 15,540.71.
- ii. IT Material – QAR 174, 523.28.

108. This agreement to pay was recorded in Mr Perry's notes of the meeting. They stated: *"all items delivered and installed & inspected"*.

109. The agreed value was confirmed by the Claimant in writing in a letter dated 19 December 2022.

110. Accordingly, the Claimant submitted a revised interim invoice in respect of this Milestone in the amount of QAR 190,063.99 on 19 December 2022.

111. The Defendant has failed to pay invoice No. TQFZ-NPP0085/2022/04B in respect of Milestone 3.

Summary: Approved Works

112. The Court considers that the Claimant is entitled to the amounts claimed below, totalling QAR 3,739,875.09. The table below sets out the various invoices.

Date of Invoice	Ref. No. Invoice	Area of Invoice	Value of Invoice (QAR)	Due Date
10/02/2022	TQFZ-NPP0085/2022/01	Advance Payment	1,000,000	27/03/2022
09/08/2022	TQFZ-NPP0085/2022/03B	Design Works	904,813.85	23/09/2022
17/07/2022	TQFZ-NPP0085/2022/02A	Procurement Works	1,644,997.25	21/08/2022
02/08/2022	TQFZ-NPP0085/2022/04B	Delivery Works	190,063.99	16/09/2022
Total of Invoices approved by AlJaber			QAR 3,739,875.09	

Non-Approved Works

113. The Claimant claims QAR 2,366,645.41 in relation to Works completed that were not approved by the Defendant. The ability to bring this claim turns on showing that the Sub-Contract was terminated as a result of the Defendant's breach of contract. The basis of the claim for Non-Approved Works is that, had the Sub-Contract not been terminated, the Sub-Contract would have continued and the Claimant would have recovered for all the work done. For reasons explained later, the Court considers that the Sub-Contract is terminated following the Defendant's breach.

114. The Defendant contends that the Claimant has failed to substantiate the amounts claimed. However, in a case of this scale, the Court considers there is no good reason why the parties could not themselves calculate the sums in issue without recourse to expert evidence. The engagement of independent experts would likely have entailed significant additional cost, and it is unsurprising that neither party chose to call such evidence. The Court is satisfied that Mr Perry adequately explained the basis of the amounts claimed, enabling the Court to assess the reasonableness of the sums claimed.

Milestone 1

115. The Non-Approved Works claim in respect of Milestone 1 amounts to QAR 379,840.16.

116. Schedule 1 to the Sub-Contract (Scope of Works) makes clear that the Claimant is responsible only for the design for integration and that all procurement and installation of "*Sub Systems*" was the responsibility of the Defendant. This Milestone was to include the design verification of the Defendant's scope of work to ensure that the Defendant's designed equipment was compatible with the "*Port Wide Security System*" and could be integrated by the Claimant under its Scope of Works.

117. Mr Perry in his witness statement at paragraphs 56-59 explains the work done. He refers to a schedule which particularises the various elements of the work. He points out that the Claimant completed each of the elements with the exception of one, which related to the verification of the Defendant's design of the installation of the Perimeter Instruction Detection System ('PIDS'). No claim is made in respect of the PIDS.

118. As pointed out above, the Defendant approved parts of the invoice raised for Milestone

1. Mr Perry points out in his witness statement at paragraph 58 that:

The completion of Milestone 1 (with the exception of the PIDS related Work), is clear from the fact that Thales was able to issue complete Security System Configuration Guideline documents for each element. If Thales had not completed an element of the Works in Milestone, it would not have been able to issue a complete Security System Configuration Guideline document for that element.

119. The Security System Configuration Guideline documents are in the hearing bundle.

The Claimant wrote to the Defendant stating that the work was completed on 22 May 2022 and 29 September 2022.

120. The Court accepts Mr Perry's evidence about the work completed under Milestone 1, and thus the unapproved claimed amount is due which is QAR 379,840.16.

Milestone 3 (Delivery)

121. As Mr Perry explained in his first witness statement at paragraph 60, there were several elements within the scope of Milestone 3 which related to the delivery of materials to the site. These materials comprised (i) hardware, (ii) software, and (iii) software licences relating to seven different systems across the Project.

122. The Claimant delivered to site all the items specified in Schedule 7, table 3, to the Sub-Contract, save for the equipment/licences which were due to be handed over under Milestone 8. The delivery notes (countersigned by the Defendant) were in the hearing bundle. Those delivery notes have not been the subject of any specific challenge prior to or during this litigation. The Court accepts Mr Perry's evidence that all of Milestone 3 was completed apart from the Gate Logic System Appliance for which no claim is made.

123. The total amount payable under Milestone 3 was QAR 548,692.31. As set out above, the approved sum was only a proportion of the total invoice submitted. The balance should have been approved/certified such that a total of QAR 381,733.82 under Milestone 3 should now be awarded.

Milestone 4 (Head End Upgrade and Testing & Commissioning)

124. This was the largest single phase of work in the Sub-Contract, for which full payment would amount to QAR 3,671,275.79. A “*Head End Upgrade*” means an upgrade to facilities that receive, process, and transmit communication signals. The cabling etc. containing the communication signals was to be installed by the Defendant, with the Claimant then connecting and integrating this to the Head End equipment.
125. The Claimant installed the Head End equipment as required under this Milestone, but it was unable to make the connections or to carry out the integration work (plus testing/commissioning) because the Defendant had not completed its own installation of the LAN. The Defendant’s LAN installation was due to be completed by 1 July 2022, but was still outstanding by February 2023. Schedule 1 to the Sub-Contract required the Defendant to have finished its works and for these works to have been (i) approved by the Engineer, (ii) tested and commissioned, and (iii) put online, which they were not.
126. On 12 October 2022, the Claimant wrote to the Defendant stating that it had completed the Head End equipment installation, and asked the Defendant to carry out an inspection. An inspection took place on 25 October 2022 and the works were approved. At the meeting of 11 December 2022, the Defendant again confirmed that it was satisfied that this work had been completed as claimed. In the Claimant’s letter of 19 December 2022, it stated that it would issue an invoice once the Defendant issued “*status A*” approval, but the Defendant failed to issue that approval and so no invoice could be raised. Nonetheless, the Court finds that the Claimant is entitled to payment of the works actually completed, and accordingly can recover QAR 1,564,206.94 in respect of Milestone 4.

Milestone 6 (Security Systems Integration and Testing & Commissioning)

127. Milestone 6 required the Claimant to integrate security equipment which was the subject of the Works into the Port Wide Security System. By the date it terminated the Sub-Contract, the Claimant had only been able to commence one element of this work, which involved liaising and discussing matters with the Ministry of Interior to ensure compliance with their border security requirements. The Court considers that the Claimant is entitled to payment for this work as explained in Mr Perry’s witness

statement at paragraph 69. The amount to which the Claimant is entitled is QAR 34,267.17.

Milestone 7 (Training)

128. Milestone 7 required the Claimant to provide training to the Defendant's teams on four different systems. It submitted its training plan and manuals on 6 October 2022. Mr Perry estimates that this amounts to 50% of the overall work required for this phase. The Claimant should receive payment for this work from which the Defendant has benefited. The Court considers that the appropriate sum is that claimed of QAR 102,508.91.

Termination

129. The Sub-Contract does not contain any express terms entitling the Claimant to terminate. The Claimant relies on article 191 of the Qatar Civil Code. This entitles the Claimant to decline to perform its obligations "*if [the Defendant's] corresponding obligations are outstanding*".

130. The Defendant was substantially in default of its payment obligations at 24 January 2023. The Advance Payment had fallen due by 27 March 2022. Interim payments had fallen due by no later than 26 October 2022 and 11 December 2022, when the Defendant stated that they had been certified.

131. The Court rejects, without hesitation, the Defendant's allegation that the Claimant abandoned the Project. This submission is entirely without merit, particularly given the Defendant's persistent and inexcusable failure to make any payments to the Claimant for the Works performed under the Sub-Contract.

132. The suggestion that the Claimant should have continued performing the Sub-Contract, despite the absence of any indication that the Defendant would honour its payment obligations, is plainly untenable. It is also not in line with article 191 of the Qatar Civil Code, which grants the creditor the right to abstain from performance if the other party has not fulfilled its corresponding obligations.

133. There is an issue that was discussed at the hearing on which the Court invited written submissions after the hearing:

Where a party seeks to terminate a contract pursuant to Qatari law under the Qatar Civil Code and does so by written notice, is the terminating Party able rely on Qatar Civil Code articles not identified in the written notice?

134. The point arises as follows. The letter of 24 January 2023, which the Claimant wrote to the Defendant serving notice that the Sub-Contract would be suspended with immediate effect until payment was received, quoted article 191 of the Qatar Civil Code. The Defendant did not respond to the letter.
135. In its letter of 5 February 2023, the Claimant referred to the Defendant's continuing breach of clause 16.3.1 (time for interim payments) and clause 16.9 (Advance Payment) of the Sub-Contract and indicated that termination would take effect 14 days after the letter was sent (i.e. on 19 February 2023). Under the heading "*Legal Basis*", the Claimant identified and quoted articles 171, 172, and 184 of the Qatar Civil Code. A schedule to the letter contained a table setting out earlier correspondence relating to payments.
136. The letter of 5 February 2023 did not refer to the right to "*demand performance of the contract or its rescission*" under article 183(1) of the Qatar Civil Code. The issue is whether this affects the Claimant's ability to rely on article 183(1).
137. The Court considers that the Claimant can rely on article 183(1) of the Qatar Civil Code for the following reasons.
138. First, the Court considers that it necessary to make a distinction between the facts and their legal consequences. Article 183(1) of the Qatar Civil Code permits a party, upon formal notice, to demand performance of a contract or its rescission if the defaulting party is in default of its own obligation. There is no requirement that the notice identifies the provision in the Qatar Civil Code that gives the right to terminate. The Court considers that it is sufficient if the factual basis for termination is given. The letter of 5 February 2023 clearly identified the Defendant's failure to perform its obligations under the Sub-Contract.
139. Second, there is no unfairness in the Claimant's position. Nor is the Defendant prejudiced. The Claimant referred to article 183 of the Qatar Civil Code as part of its

pleaded case. The Defendant did not plead that the Claimant was unable to rely on this article because it was not cited in the notice of termination.

140. Third, there are cases which support the approach taken by the courts. In Court of Cassation Case No. 43 of 2015 (14 April 2015), a four-member bench considered an appeal brought by a contemnor seeking to set aside an order of three months' imprisonment imposed for failure to satisfy a judgment debt. The appeal was based on the argument that, in the original application, the applicant had relied on incorrect articles of the procedural law.

141. The court dismissed the appeal and upheld the conviction. It held that a judge is required independently to ascertain the applicable legal provisions and to apply them to the case, irrespective of the specific legal provisions cited by the parties in support of their claims, defences, or submissions. The trial judge had correctly identified and applied the relevant legal provision which the court found sufficient to sustain the conviction.

142. In Court of Cassation Case No. 232 of 2011 (20 March 2012), a four-member bench concluded that it is for the court to identify and resolve the proper legal issues in the case, rather than relying solely on the arguments/descriptions provided by the parties when framing their claims. It stated:

It is established by the legal precedents of this Court that the trial court has the full authority to comprehend and understand the facts of the case, and that it is one of the basic rules of pleadings that the judge must adhere to the limits of the requests submitted in the case. The determining factor in determining a litigant's claims is the clear and unequivocal relief they seek from the court. It is also established that the court must describe the case accurately and determine its proper legal characterization, rather than relying solely on the descriptions or legal characterizations provided by the parties when framing their claims.

143. The judgment also states:

It is established in the jurisprudence of this Court that it is the duty of the court to give the case its correct legal characterisation and to apply the proper legal description, without being bound by the characterisation adopted by the parties.

144. Both cases exemplify the operation of the principle of *iura novit curia*, the doctrine that “*the court knows the law*”, which is deeply rooted in the Roman law tradition and

widely recognised as a core principle in civil law jurisdictions, including Qatar. Although it is not expressly codified, this doctrine forms an essential part of legal systems with an inquisitorial character, where courts play an active role in identifying both the relevant facts and the applicable legal framework. Under Qatari law, while a court is assisted by the pleadings and submissions of the parties, it is not confined to the legal arguments they advance. Instead, a court is required to ascertain the applicable law independently and to determine whether the pleaded facts give rise to a remedy under that law.

145. The Court considers that this principle supports the conclusion that there is no requirement for the formal notice under article 183(1) of the Qatar Civil Code to do more than identify the facts relied upon. There is no need to identify the legal basis of the termination provided the facts alleged are sufficient. Although English cases were cited by the Claimant, the Court derives no assistance from them in resolving the position under the Qatar Civil Code and therefore agrees with the position taken by the Defendant that they are irrelevant for present purposes. In its written submissions dated 1 July 2025, the Defendant points out that, in its Claim Form, the Claimant seeks an order declaring that it lawfully terminated the Sub-Contract on 20 February 2023, or alternatively, seeks an order declaring the Sub-Contract to be terminated immediately. The Court considers that it can and should make an order for immediate termination and does so. This takes effect as a notice for the purpose of article 183(1) of the Qatar Civil Code, because the Claimant has grounds to request from this Court termination of the Sub-Contract, and the conditions of article 183 of the Qatar Civil Code are met.

146. There are three consequences from the finding that the Sub-Contract was lawfully terminated.

147. First, the Defendant's Counterclaim is dismissed. It is premised on the contentions that the Sub-Contract was wrongly terminated and that the Claimant was not entitled to walk away from the Project. Both contentions are unjustified.

148. Second, the Claimant is able to claim damages in the amount of the Non-Approved Works.

149. Finally, it is necessary to consider the various claims set out below.

Compensation for late payment

150. As a result of the Defendant's failure to make payment of monies owed to the Claimant under the Sub-Contract, the Claimant brings a claim for compensation under article 268 of the Qatar Civil Code, which provides as follows:

If the subject matter of the obligation is an amount of money, and the obligor fails to pay such amount upon being notified to do so and provided that the obligee can prove that it incurred damage due to such non-payment, the court may require the obligor to pay indemnity, subject to the requirements of justice.

151. The basis of this claim is that if the Claimant had received payment timeously, it would have benefited from the use of this additional working capital. As the Claimant explains in its Supplemental Skeleton Argument: “[The Defendant] *has had the time-use of the money and a fair consequential award should be made so that [the Claimant] is compensated for being denied that time-use*”.

152. The Claimant submits that a fair award for this loss of time-use is QAR 500,000. Having regard to the facts that (i) the aggregate amount of QAR 6,106,325.50, which the Court found to be owing, would attract interest of QAR 305,326.45 per annum if calculated at a rate of 5%; and (ii) this amount had been due for more than two years, the Court agrees with the contention that QAR 500,000 is fair compensation for the actual financial detriment suffered by the Claimant, such as foregone investment returns or additional financing costs.

Claim for loss of profit

153. The Claimant claims for the profit it would have realised had the Defendant complied with its contractual obligations and the Sub-Contract not been terminated. There are essentially two issues to deal with. First, whether loss of profit is a recoverable head of damages. Second, the quantum of the damages (assuming damages are in principle recoverable).

154. As to the first issue, the head of loss is only permissible if the Court is satisfied that the Defendant's failures to make payment were due to fraud, deliberate default, or reckless misconduct.

155. Clause 26 of the Particular Conditions states:

Add the following Clause:

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Sub-Contract, unless any Clause within the Sub-Contract provides otherwise. The total liability of either Party shall not exceed the sum stated in the Particular Conditions or (if a sum is not so stated) the Accepted Sub-Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

156. It is necessary to consider the meaning of the phrase “*fraud, deliberate default or reckless misconduct*”. These terms are not expressly defined in the Sub-Contract, but the Court considers their meaning as follows:

- i. Fraud: this involves intentional deception by a party to secure an unfair or unlawful gain, or to induce another party to act to their detriment. It involves dishonesty.
- ii. Reckless misconduct: conduct where a party acts with disregard of a known or obvious risk that is so significant that it is unreasonable to ignore. It does not require intent to cause harm but involves a gross deviation from the standard of care.

157. The Court considers that the evidence does not bring this case within fraud or reckless misconduct, and so the issue is whether there has been “*deliberate default*” within the meaning of General Conditions clause 26. “*Deliberate default*” refers to a situation where a party knowingly and intentionally fails to perform a contractual obligation. It covers a position between mere negligence and fraudulent conduct. While it does not necessarily require dishonesty or an intention to cause harm, it does require a conscious decision not to comply with a contractual duty, fully aware that such non-performance will constitute a breach of contract.

158. The Court makes the following findings:

- i. It is clear that the Defendant knew of the contractual duties to make payment.

- ii. The Defendant made a deliberate decision not to pay. This is not a case of a failure to make payment through mistake or mismanagement. What is striking is that although there were repeated promises to pay the Claimant, nothing has been paid. This is an extraordinary state of affairs.
- iii. The Defendant knew that its failure to pay was a breach of the Sub-Contract and that it was wrongful. In other words, this is a case where there was a considered act of non-compliance rather than an inadvertent or mistaken omission. This is a case in which this is the only reasonable conclusion that can be drawn from the facts. The fact that the Defendant made what the Court considers to be a fraudulent demand for payment under the Performance Guarantee reinforces this conclusion on the facts.

159. The Claimant formulated its claim for loss of profit in its Claim Form at paragraphs 135-140 as follows:

...The agreed Subcontract Price was QAR 13,250,000, and so, had the Defendant complied with its contractual obligations and had the Subcontract not been terminated, the Claimant would have been entitled to payment of that sum.

...Due to the Defendant's default, the Claimant had no choice but to terminate the Sub-Contract as explained above...

...As a result, the Claimant was not able to complete the Works and has, therefore, lost the benefit of payment of the full Subcontract Price. The Claimant has also lost the benefit of the profit it would have earned had it been able to complete the Works.

The Claimant was only able to complete Works to the value of QAR 6,106,520.50 up to the date of termination of the Subcontract. This meant, there was a balance of Works under the Sub-Contract that could not be completed due to the termination of the Subcontract in the value of at least QAR 7,143,479.50 (i.e. QAR 13,250,000 - QAR 6,106,520,50).

On that basis, but for the termination of the Subcontract, the Claimant would be entitled to payment of QAR 7,143,479.50 in addition to the amounts already due.

The actual cost that the Claimant would have incurred had it completed the balance of the Works following the termination of the Subcontract would have been QAR 5,371,896.58 and so, the profit the Claimant would have realised had

the Sub-Contract not been terminated amounts to QAR 1,771,582.92 (i.e. QAR 7,143,479.50 - QAR 5,371,896.58).

The Claimant claims the amount of QAR 1,771,582.92 in relation to loss of profit arising out of the Defendant's default under the Subcontract.

160. The Court is satisfied that the Claimant has established this claim. Mr Perry gave evidence in his witness statement at paragraphs 123-129. He explains the calculation above in the following terms:

Within the accepted tender amount of QAR 13,250,000, the gross profit (approved by Thales Corporate Management) was calculated by Thales' Finance Team to be QAR 3,286,000 based on a total cost of QAR 9,964,000, thus equating to an end margin of 24.80% ...

As at the date of "termination", the Claimant had completed works (including approved and unapproved works) to the value of QAR 6,106,520.50 (approved amount of QAR 3,739,875.09 plus unapproved amounts of QAR 2,366,645.41).

Thales were therefore denied the opportunity to earn profit on the remaining balance of works, which it could not execute, to the amount of QAR 7,143,479.50 as calculated by Thales' Finance Team.

The cost incurred by Thales at the date of termination as calculated by Thales' Finance Team was QAR 4,592,103 including external and internal costs such as salaries and overheads and based on this cost the profit earned was QAR 1,514,416 maintaining the margin of 24.80%.

The remaining cost that would have been expended had the works been completed amounted to QAR 5,371,897 which would have generated a profit of QAR 1,771,584 with a margin of 24.80% as also calculated by Thales' Finance Team.

The [Statement of Defence and Counterclaim], under paragraph 71 states that the Claimant's profit level as being 33%, where in fact the profit margin expected and claimed on the Project by Thales as calculated by Thales' Finance Team was 24.80%.

161. Mr Perry refers to a table which was prepared by Thales's Finance Team showing the calculation.

Full Sub-Contract		Value at "termination"		Value not executed		Totals
Sub-Contract Sum	QAR 13,250,000	Works executed	QAR 6,106,520	Works not executed	QAR 7,143,480	QAR 13,250,00
Cost	QAR 9,964,000	Cost incurred	QAR 4,592,103	Cost expected to be incurred	QAR 5,371,897	QAR 9,964,000

Profit	QAR 3,286,000	Profit Earned	QAR 1,514,417	Profits Denied	QAR 1,771,583	QAR 3,286,000
Margin	24.80%	Margin	24.80%	Margin	24.80%	24.80%

162. The Court is satisfied of the reasonableness of the calculation and awards QAR 1,771,582.92 as damages.

Damages for extending the Performance Guarantee

163. The Claimant contends that, following termination of the Sub-Contract on 20 February 2023, it was entitled to the return of the Performance Guarantee by the Defendant.

164. The Claimant further claims the cost of maintaining and extending the Performance Guarantee beyond the time it was obliged to do so. In other words, the period after 20 February 2024 when the Claimant considers to be the date of suspending the Works due to the Defendant's failure to pay outstanding amounts. When issued, it was stated to expire on 31 January 2023. The Defendant made extend or pay demands on BNP Paribas. This is clear from the Defendant's letters dated 2 April 2023 and 29 October 2024.

165. The Claimant relies on article 256 of the Qatar Civil Code, which provides as follows:

If the obligor fails to perform the obligation in kind or delays such performance, the obligor shall indemnify such damage suffered by the obligee, unless such non-performance or delay therein is due to a foreign cause beyond the control of the obligor.

166. The four extensions are set out in the following table:

Ref	Date	Period	Cost	Currency	Remarks
06680IGU2200032	28-Jan-23	Extension from 16 February 2023 to 15 May 2023	788.46	QAR	Extended at Request of AIJaber
06680IGU2200032	20-Apr-23	Extension from 16 May 2023 to 15 November 2023	1,415.48	QAR	Extended at Request of AIJaber
06680IGU2200032	30-Oct-23	Extension from 16 November 2023 to 15 May 2024	1,418.31	QAR	Extended at Request of AIJaber
06680IGU2200032	30-Apr-24	Extension from 16 May 2024 to 15 November 2025	3,992.64	QAR	Extended at Request of AIJaber
			7,614.89		

167. The sum to which the Claimant is entitled amounts to QAR 7,614.89 as at 1 May 2024, which is the date the Performance Guarantee was last extended.

168. The Court considers that the Claimant is entitled to the sum claimed. It would not have been necessary to extend the Performance Guarantee had the Defendant made payments timeously when due under the Sub-Contract. As mentioned above, the Court had to issue injunctive relief on the basis that any demand for payment under the Performance Guarantee was *prima facie* fraudulent.

Relief and Costs

169. The Court notes the relief that is sought in the Claimant's Supplemental Skeleton Argument dated 24 April 2025 at paragraph 46. The Court makes an immediate order for termination of the Sub-Contract. The Claimant is entitled to payment within 14 days of the date of this judgment of the following sums:

- i. QAR 3,739,875.09 (Approved Works by the Defendant).
- ii. QAR 2,366, 645.41 (Non-Approved Works: i.e. Works completed but not approved by the Defendant).
- iii. QAR 500,000 (damages for delay in payment).
- iv. QAR 1,771,582.92 (damages for loss of profits).
- v. QAR 7,614.89 (damages for the cost of extending the Performance Guarantee).

170. Although not mentioned in the Supplemental Skeleton Argument, the Claimant is entitled to a return of the Performance Guarantee.

171. As to costs:

- i. The Court finds that the Claimant is the successful party in these proceedings.
- ii. The Defendant shall pay the Claimant's costs of and incidental to these proceedings.

- iii. In the event that the parties are unable to agree the amount of such costs within 21 days of the date of this Order, the costs shall be assessed by the Registrar.
- iv. The costs shall be paid within 14 days of agreement or, if not agreed, within 14 days of the Registrar's assessment.

By the Court,



[signed]

Justice Ali Malek KC

A signed copy of this Judgment has been filed with the Registry.

Representation

The Claimant was represented by Mr Laurence Page of Counsel (4 Pump Court, London, UK), instructed by Al Tamimi & Company (Dubai, UAE).

The Defendant was represented by Mr Guillaume Hess of K&L Gates LLP (Doha, Qatar).