

## **GENERAL STEPS TO PROPERLY PRESERVE A DELAY CLAIM**

1. Identify the relevant sections in your agreement pertaining to delay claims. Those involve:
  - a. The timeframe for providing notice of a delay;
  - b. The format of the delay notice and how it needs to be transmitted—i.e. email, mail, fax, etc.
  - c. The definition of what constitutes a delay—in this case, likely “force majeure,” pandemic, epidemic, worker shortage, supply shortage, “other cause beyond your control,” etc.;
  - d. The remedy for a delay—i.e. an extension of time, additional compensation, or both;
  - e. The steps, if any, you must take to minimize the delay—i.e. accelerate work, hire additional employees, etc.
2. Compile all information and documentation, if any, supporting your delay claim—i.e. notices from employees, suppliers, inspectors, etc. about their delays.
3. Draft the delay notice, referencing any documentation in your possession supporting that delay claim.
4. Transmit the delay notice in compliance with your agreement.
5. Once the delay is over and the time and/or cost associated with the delay are finalized, submit an updated notice of delay and/or change order as required by the agreement.
6. If your client rejects the delay claim in whole or in part, ensure that you follow the appropriate “claims” and/or “dispute resolution” provisions in your agreement to ensure that you properly preserve your delay claim.

## **STEPS TO COMPLETE THE “NOTICE OF DELAY” FORM**

1. Insert the appropriate text in all boxes with red text;
2. Remove the text or the italics for the italicized text as required by your agreement. For example, if you have no documentation supporting your delay claim, remove the text relating to the documentation. Same for the language pertaining to additional costs if you are not incurring and/or entitled to additional costs.

**NOTICE OF DELAY**

[INSERT DATE]

**VIA [ELECTRONIC MAIL, CERTIFIED MAIL, US MAIL]**

[INSERT CONTACT NAME]

[INSERT ADDRESS]

[INSERT EMAIL ADDRESS]

**Re. Notice of Delay**

Project: [INSERT PROJECT NAME]

Project Address: [INSERT PROJECT ADDRESS]

Please allow this Notice of Delay to serve as the notice of delay on the Project referenced above pursuant to Section(s) [INSERT RELEVANT SECTIONS] of our Agreement.

The basis for this Notice of Delay and the cause of the delay is [EXPLAIN REASON FOR DELAY]. These circumstances constitute a delay under [INSERT SECTION] of our agreement. *Enclosed are documents relating to and further evidencing the delay.*

We are doing everything we can to minimize the impact of the delay, but as it stands, we currently estimate that our work will be delayed: [INSERT EXPECTED LENGTH OF DELAY], and will need a related extension of time. We will keep you informed as details relating to the delay become clearer. Once the delay has ended, we will provide you with an update as to the length of the delay and its impact on our schedule, and will submit the appropriate change order.

*In addition to the extension of time, we currently estimate that we will incur costs associated with the delay as follows: [DESCRIBE TYPE OF COSTS INCURRED] in the amount of [INSERT COSTS—EITHER LUMP SUM OR DAILY RATE]. Again, we will keep you informed as details relating to the costs stemming from the delay become clearer, and once the delay has ended, will provide you with an update as to the actual costs incurred and/or submit the appropriate change order.*

Should you have any questions or comments regarding this Notice of Delay, please do not hesitate to me.

[INSERT CLIENT NAME]

By: \_\_\_\_\_

[INSERT NAME]

Encs.

SAMPLE  
**NOTICE OF DELAY**

April 2, 2020

**VIA ELECTRONIC MAIL**

Michael Hoffman  
ABC Worldwide  
626 W. LaSalle St.  
Chicago, IL 60601  
mhoffman@abcworldwide.com

**Re. Notice of Delay**

Project: EXPO Logistics  
Project Address: 262 Monroe St., Naperville, IL

Please allow this Notice of Delay to serve as the notice of delay on the Project referenced above pursuant to Section(s) 8.3 and 15 of our Agreement.

The basis for this Notice of Delay and the cause of the delay is the unexpected inability to obtain material required to perform our work, stemming from our supplier temporarily and unexpectedly closing its facility and ceasing operations as the result of the ongoing COVID-19 pandemic. These circumstances constitute a delay under Section 8.3 of our agreement. Enclosed please find correspondence from our supplier relating to the shutdown of its facility.

We are doing everything we can to minimize the impact of the delay, but as it stands, we currently estimate that our work will be delayed approximately fourteen days as we move to obtain the material from a different supplier, and will need a related extension of time. We will keep you informed as details relating to the delay become clearer. Once the delay has ended, we will provide you with an update as to the length of the delay and its impact on our schedule, and will submit the appropriate change order.

In addition to the extension of time, we currently estimate that we will incur costs associated with the delay in the amount of \$15,000, which is the additional cost we expect to incur in temporarily suspending our work and obtaining the necessary material from another supplier. Again, we will keep you informed as details relating to the costs stemming from the delay become clearer, and once the delay has ended, will provide you with an update as to the actual costs incurred and/or submit the appropriate change order.

Should you have any questions or comments regarding this Notice of Delay, please do not hesitate to me.

Horn Concrete Construction, Inc.

By: \_\_\_\_\_  
Mark Horn, President

*Encs.*