

CODE OF OBLIGATIONS

Section 580

If the contract is based upon an estimate of costs without the contractor assuming that such an estimate is correct and final, and the costs for the work exceed the estimate, the following rules shall apply:

1) if the costs are not more than five per cent over the estimate, the hirer of work is bound to accept the work and pay the remuneration;

2) if the costs are more than five per cent over the estimate, the hirer of work can claim cancellation of the contract.

NOTE.

Cf. German Code, article 650.

A contrario, if the estimate is assumed to be correct and final, the contractor is in any case bound by such an estimate.

The German Code says besides that "if such exceeding of the estimate is to be expected, the contractor shall give notice to the employer without delay". This notification is necessary, in the German system,

because they consider only the case where the work would "largely exceed the estimate" without any specification of limit. But with our system of "five per cent limit", it will happen that the contractor, if prudent, will not fail to make the notification spontaneously as soon as the exceeding will be more than five per cent, because he knows that he would be exposed to a claim of cancellation by the employer if he did proceed on with the work without notifying the latter.

28th. November 1921.