

FIDIC 合約基本架構

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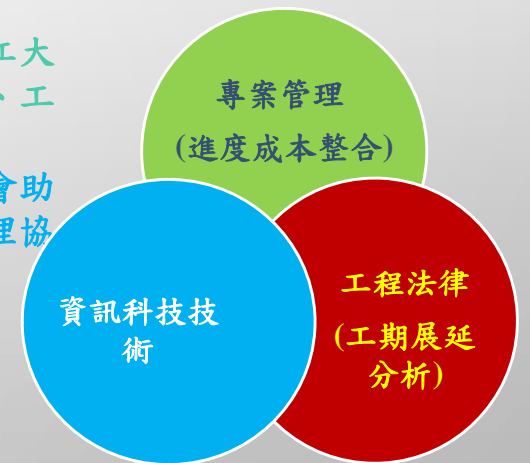
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現職：臺馬專案管理與資訊科技國際聯合中心主任、淡江大學工程法律研究發展中心主任、淡江大學土木系副教授、工程爭議鑑定人、工程爭議調解顧問、中華民國仲裁協會仲裁人、工程爭議審議/裁決委員、桃園地方法院工程專業諮詢委員、桃園地方法院調解委員

經歷：印度Veltech University訪問學者、澳洲Curtin University訪問學者、行政院公共工程委員會助理、第四屆台灣工程法學會秘書長、第五屆台灣工程法學會理事、第十二屆營建管理協會技術發展委員會主任委員、第十三屆環境發展促進委員會委員

得獎：2009淡江大學優良導師獎、2011至2017年淡江之光獎、淡江大學105學年度傑出研究教師



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臺馬專案管理與資訊科技國際聯合中心
淡江大學工程法律研究發展中心



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

- Fédération Internationale des Ingénieurs Conseils
- International Federation of Consulting Engineers
- 1913/7/22
- Member Association
- Multinational Development Banks

FIDIC MEMBER ASSOCIATIONS & ASSOCIATES

Albania	Albanian Association of Consulting Engineers
Australia	Consult Australia
Austria	Austrian Consultants Association
Azerbaijan	National Engineering Consultancy Society of Azerbaijan
Bahrain	Bahrain Society of Engineers
Bangladesh	Bangladesh Association of Consulting Engineers
Belgium	Organisation des Bureaux d'Ingenieurs-Conseils, d'Ingenierie et de Consultance
Bosnia and Herzegovina	Association of Consulting Engineers of Bosnia and Herzegovina
Botswana	Association of Consulting Engineers Botswana



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CONTRACT FORMS

- Conditions of Contract for Works of Civil Engineering Construction: The Red Book (1987)
- Conditions of Contract for Electrical and Mechanical Works including Erection on Site: The Yellow Book (1987)
- Conditions of Contract for Design-Build and Turnkey: The Orange Book (1995)



SHORT FORM

- under US\$ 500,000
- 6 months
- the work involved is relatively simple



Conditions of Contract
for EPC Turnkey Projects
Sliver Book

DBO CONTRACT 1ST ED (2008 GOLD
BOOK) Conditions of Contract for Design,
Build and Operate Projects

The RED BOOK/The PINK BOOK

- Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (The Construction Contract)
- the MDB Harmonised Edition of the Construction Contract 2005 (2006,2010)/FIDIC Pink Book: The MDB Harmonised Edition of the Red Book

Construction (1999 Red
Book) Subcontract 1st Ed
(2011)

Conditions of Contract for Plant and
Design-Build for Electrical and
Mechanical Plant and for Building
and Engineering Works Designed by
the Contractor: The Plant and
Design-Build Contract (Yellow Book)



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GREEN BOOK

- Short Form of Contract
- The Guidance Notes for the Green Book recommended that generally it should not be used on projects with a contract value greater than US\$500,000.
- However, depending on the type of work and the circumstances, most suited for fairly simple or repetitive work or work of short duration without the need for specialist sub-contracts.
- Under the usual arrangements for this type of contract, the Contractor constructs the Works in accordance with design provided by the Employer. However it may also be suitable for contracts which include, or wholly comprise, the contractor's design.



RED BOOK (1)

- Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (The Construction Contract)
- The Red Book provides conditions of contract for construction works where the design is carried out by the Employer.
- the focus is now more on type of procurement rather than the nature of the works.
- The current edition drops the words “civil engineering” from the title and this signifies a move away from the Red Book only being applicable to civil engineering works.
- The Red Book is intended for use on projects where the employer carries out the design but it also allows for some elements of the project to be Contractor designed.
- The Red Book is not suitable for use where most of the works are to be designed by the Contractor



RED BOOK (2)

- Administration of the project and supervision of the works is carried out by an Engineer who is employed by the Employer. The engineer is responsible, amongst other things, for issuing instructions, certifying payments and determining completion.
- Payments are normally determined by measurement and applying the rates and prices from the bill of quantities. There is an option for payment to be on the basis of a lump sum.
- Forms of security such as parent company guarantee, advance payment bond and a retention guarantee which can be selected as applicable to the contract via the Particular Conditions.



RED BOOK (3)

- Where the engineer is required to determine a matter or settle a claim he is required to consult with each of the parties to try and reach an agreement.
- If agreement cannot be reached the engineer must make a fair determination taking due regard of all relevant circumstances.
- If an engineer's determination is not agreed by either of the parties then the dispute will be referred to a Dispute Adjudication Board for a decision.
- The DAB is formed of one or three people who are jointly appointed by the parties. If the decision of the DAB is not accepted by any of the parties then the final step will be resolution via an international arbitration.



PINK BOOK

- Red Book (MDB edition) ~ MDBs
 - African Development Bank
 - Asian Development Bank
 - Black Sea Trade and Development Bank
 - Caribbean Development Bank
 - European Bank for Reconstruction and Development
 - Inter-American Development Bank
 - International Bank for Reconstruction and Development (The World Bank)
 - Islamic Bank for Development Bank
 - Nordic Development Fund



CONDITIONS OF SUBCONTRACT FOR CONSTRUCTION

- In February 2010, FIDIC published the 2009 "test" edition.
 - The sub-contractor assumes the duties and obligations of the contractor under the main contract for the sub-contract works.
 - The payment terms include pay-when-paid clauses.
 - FIDIC has included guidance notes and sample particular conditions, to assist the parties in jurisdictions, like the UK, where pay-when-paid clauses are unenforceable.
 - The parties can refer disputes that are specific to the sub-contracting relationship to an ad hoc dispute adjudication board.
 - The sub-contractor must provide programme details that are not required under the Pink Book's programming requirements. That is, the sub-contract has more detailed programme requirements than the Pink Book.



YELLOW BOOK

- The Yellow Book provides conditions of contract for construction works where the design is carried out by the Contractor.
- The current edition drops the words “electrical and mechanical works” from the title
- the focus is now more on type of procurement rather than the nature of the works.
- The Yellow Book is therefore applicable to the provision of electrical and/or mechanical plant, and for the design and execution of building or engineering works.
- Under the usual arrangements for this type of contract, the Contractor designs and provides the works in accordance with the Employer’s requirements which may include any combination of civil, mechanical, electrical and/or construction works.



ORANGE BOOK (1)

- Conditions of Contract for Design-Build and Turnkey
- When the Orange book was published the Red and Yellow Books were still aimed at procurement of civil engineering and plant installation respectively.
- At the time it added a clear design and build and turnkey option into the available suite of contracts. Since the publication in 1999 of the latest Red and Yellow Books there is now less focus on the type of project and more focus on the implementation of different procurement strategies.
- It is now likely that an Employer requiring a design and build or turnkey project under a FIDIC contract would use a 1999 edition of the Yellow Book for design and build or a Silver Book for Turnkey.



ORANGE BOOK (2)

- The Orange Book is drafted for use where the Contractor carries total liability for design.
- For the Employer, such single-point responsibility may be advantageous, but the benefits may be offset by having less control over the design process and more difficulty in imposing varied requirements.
- Under the usual arrangements for a design-build contract, the Contractor is responsible for the design and provision of works. The works may include any combination of engineering (including civil, mechanical, electrical, etc) and building works.



ORANGE BOOK (3)

- The Orange Book is intended for use on turnkey contracts, under which the Employer's requirements usually include provision of a fully-equipped facility, ready for operation at the turn of a key.
- The exact Employer requirements will need to be fully detailed to describe the design, construction, fixtures, fittings and equipment required to be provided by the Contractor's design.
- When used for turnkey projects it may be necessary to impose a requirement for the Contractor to operate the Works, either for a few months' commissioning period, or for some years' operation on a build-operatetransfer basis. If this is the case then the FIDIC Gold Book may now be more appropriate.



SILVER BOOK (1)

- Conditions of Contract for EPC Turnkey Projects
- The Silver Book is suitable for use on process, power and private-infrastructure projects where a Contractor is to take on full responsibility for the design and execution of a project.
- Risks for completion to time, cost and quality are transferred to the Contractor and so the Silver Book is only suitable for use with experienced Contractors familiar with sophisticated risk management techniques.
- For many large projects construction is only one part of a wider complicated commercial venture and financial or other failure of the construction project will jeopardize the whole venture.
- The Silver Book approach may suit such projects as it will provide a greater level of cost certainty than can be achieved under the more traditional forms of the FIDIC suite



SILVER BOOK (2)

- To obtain this increased cost certainty the Silver Book requires the Contractor to accept a higher level of risk than is typical under most other forms of contract.
- The Silver Book transfers the risk of ground conditions to the Contractor. Similarly the Contractor also assumes responsibility, subject to some exceptions, for the accuracy of the Employers Requirements which is a major difference to usual design and build contracts.
- Given the high level of risk transfer the Employer must allow time sufficient time in its procurement programme for the Contractor to obtain and consider all relevant information before signing the contract.
- Not all risk is passed to the Contractor under the Silver Book and the Employer still retains risks for war, terrorism and Force Majeure.



SILVER BOOK (3)

- Through the use of Particular Conditions it is possible for the Employer and Contract to agree alternative risk sharing arrangements before entering into the Contract.
- Following award of a project under the Silver Book the Contractor will be given freedom to carry out the work in his chosen manner, provided the end result meets the performance criteria specified by the Employer.
- Consequently, the Employer should only exercise limited control over the Contractor's work. There is no reference to an Engineer in the Silver Book. This is because the Employer's reduced influence on the engineering generally



SILVER BOOK (4)

- Checking of engineering is more concentrated on validating the end performance and validating the potential ease of operation, maintenance and spares.
- The Silver Book provides conditions relating to ‘Tests on Completion’ and Taking Over only takes place after successful completion of the tests.
- Such provisions are important for EPC/Turnkey projects where the purpose of the contract is to provide the Employer with a working facility



GOLD BOOK (1)

- DBO Contract
- Following publication of the Orange Book in 1995 and the Red, Yellow and Green Books in 1999 it became clear that there was a growing need for a contract combining a design-build obligation with a long-term operation commitment.
- a “green-field” DBO scenario with a 20 year operation period and a single contract awarded to a single contracting entity (which will almost certainly be a consortium or joint venture) to optimise the coordination of innovation, quality and performance, rather than award separate contracts for design-build and for operation.

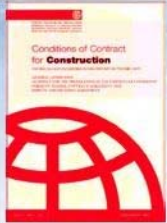
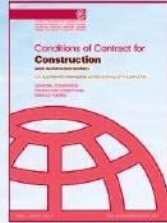

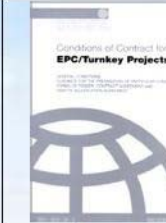





GOLD BOOK (2)

- Users who wish to adopt the conditions for use with a different scenario (such as a brown field operate, design, build) or with an operation period significantly different to the 20-year period assumed, are referred to the DBO Contract Guide which identifies the clauses which will require amending by including Special Provisions, and gives comprehensive guidelines and suggestions on how the various issues should be addressed.
- Successful performance of a long-term DBO contract requires that the parties fully understand the overall time framework and the need for a long-term commitment by both the employer and the contractor. It has therefore been necessary to introduce new procedures and new terminology which are not to be found in the other FIDIC forms of contract.

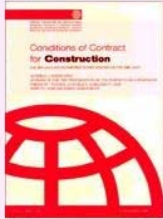
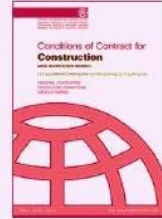



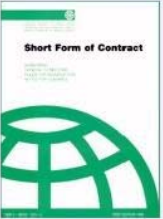



Comparison of FIDIC General Condition

Comparison of General Condition (among the FIDIC Main Forms of Contract)						
Red Book 1999	Red Book MDB / Pink Book / 2005-2010	Yellow Book 1999	Silver Book 1999	DBO Gold Book 2008	Green Book 1999	Blue Book 2006
						
Clause 1. General Provisions						
Clause 2. The Employer						
Clause 3. The Engineer			Clause 3. The Employer's Administration	Clause 3. The Employer's Representative		3. The Engineer
Clause 4. The Contractor						
Clause 5. Nominated Subcontractors		Clause 5. Design			Clause 5. Design by the Contractor	
Clause 6. Staff and Labour						
Clause 7. Plant, Material, and Workmanship						
Clause 8. Commencement, Delays and Suspension				Clause 8. Commencement, Completion and Programme.		
				Clause 9. Design- Build		
				Clause 10. Operation Service		
Clause 9. Tests on Completion				Clause 11. Testing		
				Clause 6. The Employer Liabilities		Clause 6. Defined Risk
Clause 10. Employer's Taking Over						Clause 7. Time for Completion
Clause 11. Defects Liability						Clause 8. Taking - Over
Clause 12. Measurement and Evaluation		Clause 12. Tests after Completion		Clause 12. Defects		Clause 9 Remedying Defects
Clause 13. Variations and Adjustments						Clause 10. Variations and Claims
Clause 14. Contract Price and Payment						Clause 11. Contract Price and Payment
Clause 15. Termination by Employer						
Clause 16. Suspension and Termination by Contractor						
						Clause 12. Default
Clause 17. Risk and Responsibility				Clause 17. Risk Allocation		Clause 13. Risk and Responsibility
				Clause 18. Exceptional Risk		
Clause 18. Insurance				Clause 19. Insurance		Clause 14. Insurance
Clause 19. Force Majeure						
Clause 20. Claims, Disputes and Arbitration						Clause 15. Resolution of Disputes

Note : Excluding Red Book / MDB Red Book, the Designer is obliged to obtain the consent of the Employer; and there is an attendance obligation of design meetings with the Employer (Yellow, Silver, Gold Book).

Comparison of FIDIC Main Standard Forms of Contract

Comparison of the current FIDIC Main Standard Forms of Contract							
Appellation	Red Book 1999	Red Book MDB / Pink Book 2010 (July)	Yellow Book 1999	Silver Book 1999	DBO Gold Book 2008	Green Book 1999	Blue Book 2006
Book Cover							
Name	Conditions of Contract for Construction For Building and Engineering Works Designed by the Employer.	Conditions of Contract for Construction Multilateral Development Bank (MDB) Harmonized Edition For Building and Engineering Works Designed by the Employer	Conditions of Contract for Plant and Design Build For Electrical and Mechanical Plant, and For Building and Engineering Works, Designed by the Contractor.	Conditions of Contract for EPC/ Turnkey Projects	Conditions of Contract for Design, Build and Operate Projects	Short Form of Contract	Form of Contract For Dredging and Reclamation Works
Year of publication / Clause number / page number	1999 / 20 clauses / 120 pages	2010 / 20 clauses / 126 pages	1999 / 20 clauses / 120 pages	1999 / 20 clauses / 150 pages	2008 / 20 clauses / 158 pages	1999 / 15 clauses / 35 pages	1999 / 15 clauses / 36 pages
Design Entity	The Employer	The Employer	The Contractor	The Contractor	The Contractor	The Employer / Contractor	The Employer / Contractor
General View	<ul style="list-style-type: none"> - The Employer completes almost all of the designs; - Risk is shared between the Employer and the Contractor; - Since the "Multilateral Development Banks" (MDBs) desire to harmonize their bid documents including a standard form of contract, FIDIC responded by modifying the Red Book (1999) and issuing the Conditions of Contract for Construction MDB Harmonised Edition (FIDIC MDB Red Book / Pink Book, as a version for international development financial institutions). The latest version was issued in 2010. - Reasons for the MDBs to adopt FIDIC Red Book MDB / Pink Book includes: <ul style="list-style-type: none"> ◇ More equitable (equal) to share the rights and obligations between the Employer and the Contractor; ◇ Saving bidding costs and shortening Time for preparation of tender documents; ◇ Provisions such as the Bank intervention is needed. 		<ul style="list-style-type: none"> - The Contractor implements the design, and construction; - Equal risk sharing between the Employer and the Contractor; - Construction is required to satisfy the Employer's created outline or performance specifications. <p>Note : The Yellow Book is constituted to be a Lump Sum Price Contract with payments made according to the achieved milestones progress.</p>	<p>The Contractor will assume full responsibility, with respect to design and construction, to deliver a fully equipped state that can be founded by simply "turn key".</p> <p>As long as the final result matches the specified performance criteria, the Employer is not involved in the day-to-day progress.</p>	<p>The DBO Contract is to build upon the advantages of the DBO procurement approach which combines design, construction and long-term facility operation and maintenance into a single contract with one legal entity (the Contractor).</p> <p>The Sole-owned Terms of DBO Gold Book :</p> <ul style="list-style-type: none"> ◇ License Agreement; ◇ Independent Compliance Audit; ◇ Asset Replacement Fund; ◇ Maintenance Retention Fund. 	<ul style="list-style-type: none"> - No Sub-Contracting without Consent; - Variety of Pricing Options; - No Engineer; - Employer's Liability; <p>Choice of this type of form considering the following circumstances:</p> <ul style="list-style-type: none"> ◇ Straightforward Projects of Small Capital Value; ◇ Construction period is short-term; ◇ Construction is relatively simple or repetitive; 	<p>FIDIC and International Association of Drilling Contractors (IADC) jointly drafted this Form of Contract for Dredging and Reclamation Works as well as ancillary construction work.</p> <p>Typically, under this form of contract, the contractor is to construct the works according to the employer's design. However, this form of contract can also be adapted for contract that consists entirely of contractor - designed works.</p>
Clause 3 The Engineer	Yes (to be appointed)	Yes (to be appointed)	Yes (to be appointed)	None (Employer's Administration)	None (Employer's Representative)	None (Employer's Representative)	Yes (to be appointed)
<p>Note : FIDIC have amended the role of the Engineer in the Red and Yellow Books from the impartial, quasi arbitral role of previous editions. The Engineer is clearly stated to act for the Employer. He is no longer required to be impartial but whenever required to make a determination in respect of value, cost or time related matter he has to make his determination fairly and in accordance with the Contract.</p>							

Comparison of FIDIC Main Standard Forms of Contract

Comparison of the current FIDIC Main Standard Forms of Contract

Appellation	Red Book 1999	Red Book MDB / Pink Book 2010 (July)	Yellow Book 1999	Silver Book 1999	DBO Gold Book 2008	Green Book 1999	Blue Book 2006
Clause 4.12 Unforeseeable Physical Condition	Borne by the Employer	Borne by the Employer	Borne by the Employer	Borne by the Contractor	Borne by the Employer	Borne by the Employer	Borne by the Employer
	<ul style="list-style-type: none"> Borne by the Employer (業主承擔) means that: If the unforeseeable physical condition is encountered, the Contractor has the right to claim for construction time extension and payment of additional costs. 						
Clause 5 Nominated Subcontractors	The subcontractor is required to complete its scope of works such that no act or omission shall constitute or cause a breach under the Red Book.		None (does not exist)	None (does not exist)	None (does not exist)	None (does not exist)	None (does not exist)
Clause 5 Design (Yellow, Silver, Gold Book)	None (Design Clause does not exist)		- The Designer (Contractor) is obliged to comply with the standards prescribed in the requirements of the Employer.		Typically, under these forms of contract, the contractor is to construct the works according to the employer's design. However, these forms of contract can also be adapted for contracts that include or consist entirely of contractor designed works under Clause 5 Design by the Contractor.		
Clause 5 Design by the Contractor (Green, Blue Book)			- The Designer (Contractor) shall obtain the consent of the Employer (Silver & Gold Book) or the Engineer (Yellow), and there is an attendance obligation of design meetings with the Employer (Silver & Gold Book) or the Engineer (Yellow Book).				
Clause 12 Tests after Completion	None (does not exist)		To determine whether to meet the performance criteria of the construction, it must be performed as soon as possible after delivery.		None (does not exist)	None (does not exist)	None (does not exist)
Clause 14 Contract Price and Payment (Red Book, Pink Book, Yellow Book, Silver Book, and Gold Book)	Payment to the Contractor is based upon work done (actual physical progress) and rates as per a Bill of Quantities (a Standard Method of Measurement should be stated); thus reflecting the likely on site nature of the Works (a reflection that the Red Book will most likely be used for building and civil engineering projects).		Lump Sum Pricing Contract - The Contract Price shall be the lump sum Accepted Contract Amount and be subject to adjustments in accordance with the Contract. - Under Contract Schedule of Payments, payments are made according to the achieved progress milestones on the basis of certification by the engineer.	Fix Lump Sum Pricing Contract: - Payment for the Works shall be made on the basis of the lump sum Contract Price, subject to adjustments in accordance with the Contract.	Lump Sum Pricing Contract - The Contract Price shall be the amounts submitted by the Contractor for the Design-Build and the Operation Service priced at the Base Date - Payments from the Asset Replacement Fund (to provide the necessary funding for the duration of the Operation Service Period) shall be made in accordance with the provisions of Sub-Clause 14.18 [Asset Replacement Fund].	- The Works shall be valued as provided for in the Appendix of Contract, subject to Clause 10 [Variations and Claims]. - The Contractor shall be entitled to be paid at monthly intervals: a) the value of the Works executed, b) the percentage stated in the Appendix of the value of Materials and Plant delivered to the Site at a reasonable time,	- The Works shall be valued as provided for in the Appendix of Contract, subject to Clause 10 [Variations and Claims]. - Clause 11 sets out the conditions to be met before the Contractor gets paid, the procedures to be followed, the method for calculating the amounts of each payment. - In all cases, payment is made by the Employer but certified by the Engineer at monthly intervals on an interim basis.
Clause 11 Contract Price and Payment (Green and Blue Book)	Based on the "Bill Of Quantities" of construction Contract : - Contract price of each item is calculated by the measured quantity multiplying the unit price. - If additional work occurs, the contractor has the right to receive the established payment of additional cost.			- The Contractor is required prior certainty so that the situation of exceeding the agreed contract price and construction period will not occur. However, the contractor has to bear the high risk in price and construction period.			
Clause 17 Risk and Responsibility	Based on the circumstances of risk mitigation, each risk is allocated fairly and equally to the party that is best able to bear and control that risk.			The contractor bearing high risk is required.	Referring to Clause 15 Risk allocation	Risks are allocated fairly and equally between the parties. (Clause 13 Risk and Responsibility)	
Clause 20 Claim	Claim notification sent to the Engineer			Claim notification sent to the Employer			None of DAB
Clause 20 Dispute Adjudication Board	Regularly Standing (常設)		Temporary (臨時) - It will be set up in the event of any dispute occurs.			• Clause 15 sets out the procedure for the resolution of disputes where not settled amicably.	



Note : FIDIC, the International Federation of Consulting Engineers, has reached an historic agreement with the major multi-lateral development banks on the production of a new standard form of contract based on the popular FIDIC 1999 Construction Contract. Through revisions in Ver-1 (May 2005), Ver-2 (March 2006), Ver-3 (July 2010), FIDIC and International development banks (MDB) have created jointly the FIDIC MDB Red Book / Pink Book (as a version for international development financial institutions) to reduce the change works, also, in order to avoid a conflict with unclear changes that have been made individually.

The following Multilateral Development Banks (MDBs) have participated in the production of the Harmonized Edition and are committed to adopting this form for future projects financed by them:
 1.> African Development Bank; 2.> Asian Development Bank (ADB); 3.> Black Sea Trade and Development Bank; 4.> Caribbean Development bank; 5.> European Bank for Reconstruction and Development;
 6.> Inter-American Development Bank; 7.> International Bank for Reconstruction and Development (IBRD, The World Bank); 8.> Islamic Bank for Development; 9.> Nordic Development Fund.

* Referring to : The FIDIC Contract Guide – Supplement With Detailed Guidance on Using the First Editions of FIDIC's Conditions of Contract for Construction Multilateral Development Bank Harmonized Edition.

RED BOOK /PINK BOOK (1)

- 2.4: Employer's Financial Arrangements
- Red Book
 - the Employer is required to submit reasonable evidence that financial arrangements have been made and are being maintained to enable the Employer to pay the Contract Price, within 28 days of the Contractor's request to do so.
- Pink Book
 - the Employer to submit the reasonable evidence "before the Commencement Date" as well as within 28 days of the Contractor's request. In addition, the evidence that the Employer provides must demonstrate that it is able to pay the Contract price "punctually".



	Red Book	MDBs
2.4 Employer's financial arrangement	The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [<i>Contract Price and Payment</i>]. <u>If the Employer intends to make any material change</u> to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.	The Employer shall submit, <u>before the Commencement Date</u> and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price <u>punctually</u> (as estimated at that time) in accordance with Clause 14 [<i>Contract Price and Payment</i>]. <u>Before the Employer makes any material change</u> to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.



RED BOOK /PINK BOOK (2)

- 2.5: Employer's Claims
- Under the 1999 Red Book
 - the Employer is required to submit reasonable evidence that financial arrangements have been made and are being maintained to enable the Employer to pay the Contract Price, within 28 days of the Contractor's request to do so.
- The Pink Book
 - the Employer must still give notice as soon as practicable
 - but (in any event) the notice must be given within 28 days of the Employer becoming aware, or when it "should have become aware", of the circumstances giving rise to the notice. This appears to be a more onerous provision for the Employer. However, the words "should have become aware" makes it difficult to operate as a condition precedent.



	Red Book	MDBs
2.5 Employer's Claims	The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.	The notice shall be given as soon as practicable <u>and no longer than 28 days</u> after the Employer became aware, <u>or should have become aware</u> , of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.



RED BOOK /PINK BOOK (3)

3.1 The Engineer's duties and authority

- Red Book

- the Employer has an obligation not to impose “further constraints on the Engineer's Authority except as agreed with the Contractor.”

- Pink Book

- the Employer is allowed to change the authority of the Engineer without the agreement of the Contractor.
- This change may be seen as potentially affecting the balance of risk.
- The second amendment under sub-clause 3.1 requires the Engineer to obtain the Employer's approval before taking action under sub-clauses 4.12, 13.1, 13.3 and 13.4.



MDBs

3.1: The Engineer's duties and authority

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

(d) any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:

(A) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.

(B) Sub-Clause 13.1: instructing a Variation, except:

(i) in an emergency situation as determined by the Engineer, or

(ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.

(C) Sub-Clause 13.3: approving a proposal for Variation submitted by the Contractor in accordance with Sub-Clause 13.1 or 13.2



	MDBs
3.1: The Engineer's duties and authority	<p>(D) Sub-Clause 13.4: specifying the amount payable in each of the applicable currencies. Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.</p>



RED BOOK /PINK BOOK (4)

- 3.5: Determinations
- Red Book
 - the Engineer is required to give the Contractor and the Employer notice of its determination of any matter not agreed between the parties.
- Pink Book
 - the Engineer is required to give the Contractor and the Employer notice of its determination of any matter not agreed between the parties
 - a time limit for the determination (28 days from receipt of the corresponding claim or request)



	Red Book	MDBs
3.5: Determinations	The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].	The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, <u>within 28 days from the receipt of the corresponding claim or request except when otherwise specified.</u> Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].



RED BOOK /PINK BOOK (5)

- 4.2: Performance Security
- Red Book
 - In the events.....
- Pink Book
 - Except for the amount entitled.



	Red Book	MDBs
4.2 : Performance Security	<p>The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract <u>in the event of</u>:</p> <p>(a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,</p> <p>(b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [<i>Employer's Claims</i>] or Clause 20 [<i>Claims, Disputes and Arbitration</i>], within 42 days after this agreement or determination,</p> <p>(c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or</p> <p>(d) circumstances which entitle the Employer to termination under Sub- Clause 15.2 [<i>Termination by Employer</i>], irrespective of whether notice of termination has been given.</p>	<p>The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.</p>

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RED BOOK /PINK BOOK (6)

- 15.6: Corrupt or Fraudulent Practices
- Pink Book
 - A new clause dealing with corrupt or fraudulent.
 - The amendment is consistent with the global trend to seek to prevent fraud and corruption.
 - The contractual sanction is that the Employer may terminate the Contract if it determines “based on reasonable evidence” that the Contractor has engaged in a fraudulent practice.
 - The definition of “fraudulent practice” is very broad (“misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract”) and may have far-reaching implications for the Contractor in the administration of the Contract.



MDBs

15.6: Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [*Termination by Employer*].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub- Clause 6.9 [*Contractor's Personnel*].

[*For contracts financed by the African Development Bank:*]

For the purposes of this Sub-Clause:

(a) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in the contract execution; and

(b) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to the borrower of the benefits of free and open competition.



RED BOOK /PINK BOOK (7)

- 16.1: Contractor's Entitlement to Suspend Work
- Pink Book
 - If the Bank suspends payment of the funds from which the Contractor is paid, and no alternative funds are available, the Contractor can suspend or reduce the rate of work it performs at any time (having received a notice from the Bank).



	MDBs
16.1: Contractor's Entitlement to Suspend Work	Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

If the Bank suspends payment of the funds from which the Contractor is paid, and no alternative funds are available, the Contractor can suspend or reduce the rate of work it performs at any time (having received a notice from the Bank).



RED BOOK /PINK BOOK (8)

- 16.2: Termination by Contractor
- Red Book
 - the Employer to fail to perform its obligations under the Contract.
- Pink Book
 - the Employer to fail to perform its obligations under the Contract.
 - If the Bank suspends the loan or credit from which the Contractor is paid and 14 days after the Contractor has followed the payment mechanism under sub-clause 14.7 it has still has not received the sums due to it, the Contractor can suspend work, reduce its rate of work or terminate the Contract.
 - • If the Contractor does not receive the Engineer's instruction to commence work 180 days after the Letter of Acceptance, the Contractor may terminate the Contract.



	Red Book	MDBs
16.2: Termination by Contractor	<p>The Contractor shall be entitled to terminate the Contract if:</p> <p>...</p> <p>(d) the Employer substantially fails to perform his obligations under the Contract,</p> <p>...</p>	<p>The Contractor shall be entitled to terminate the Contract if:</p> <p>...</p> <p>(d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,</p> <p>...</p> <p>(h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].</p>



	MDBs
16.2: Termination by Contractor	In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [<i>Payment</i>] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub- Clause 14.8 [<i>Delayed Payment</i>], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.



RED BOOK /PINK BOOK (9)

- 17.6: Limitation of Liability
- Red Book
 - Other than Payment on Termination and Indemnities.
- Pink Book
 - Other than Delay Damages ;
 - Cost of Remedying Defects ;
 - Payment on/after Termination ;
 - Indemnities;
 - Consequences of Employer' s Risks ;
 - Intellectual and Industrial Property Rights .

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	Red Book	MDBs
17.6: Limitation of Liability	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 Contract, <u>other than under Sub-Clause 16.4 [Payment on Termination] and Sub-Clause 17.1 [Indemnities].</u>	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 Contract, <u>other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].</u>



RED BOOK /PINK BOOK (10)

- 20.1: Contractor's Claim
- Red Book
 -
- Pink Book
 - 42 days



	Red Book	MDBs
20.1 : Contractor's Claims	<p>The Engineer shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [<i>Extension of Time for Completion</i>], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.</p>	<p><u>Within the above defined period of 42 days,</u> the Engineer shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [<i>Extension of Time for Completion</i>], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. <u>If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [<i>Obtaining Dispute Board's Decision</i>].</u></p>

YELLOW BOOK /SILVER BOOK

- If there is insufficient time or information for tenderers to scrutinise and check the Employer's Requirements or for them to carry out their designs, risk assessment studies and estimating;
- If construction will involve substantial work underground or work in other areas which tenderers cannot inspect, unless special provisions are provided to account for unforeseen conditions or
- If the Employer intends to supervise closely or control the Contractor's work, or to review most of the construction drawings.
- FIDIC : **D/B** (提供基本設計、設計審查)與EPC



SHORT FORM

- under US\$ 500,000
- 6 months
- the work involved is relatively simple



Conditions of Contract
for EPC Turnkey Projects
Sliver Book

DBO CONTRACT 1ST ED (2008 GOLD
BOOK) Conditions of Contract for Design,
Build and Operate Projects

The RED BOOK/The PINK BOOK

- Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (The Construction Contract)
- the MDB Harmonised Edition of the Construction Contract 2005 (2006,2010)/FIDIC Pink Book: The MDB Harmonised Edition of the Red Book

Construction (1999 Red
Book) Subcontract 1st Ed
(2011)

Conditions of Contract for Plant and
Design-Build for Electrical and
Mechanical Plant and for Building
and Engineering Works Designed by
the Contractor: The Plant and
Design-Build Contract (Yellow Book)



臺馬專案管理與資訊科技國際聯合中心
淡江大學工程法律研究發展中心

<http://www.constructionlaw.tku.edu.tw/>