



INTERNATIONAL CONSTRUCTION CONTRACTS

A HANDBOOK

William Godwin



International Construction Contracts

International Construction Contracts *A Handbook*

with commentary on the FIDIC
design-build forms

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For Jane

Contents

<i>Preface</i>	xiii
<i>Foreword by Vivian Ramsey</i>	xv
<i>Acknowledgements</i>	xvii
<i>About the Author</i>	xix
 Part I	 1
1 Contract	3
1.1 What is a contract?	3
1.2 Agreement	4
1.3 Do contracts need to be in writing?	5
1.4 Other elements of a contract	5
1.5 Capacity and authority	6
1.6 Importance of a written contract	8
1.6.1 Clarity and certainty	8
1.6.2 Procedures	9
1.6.3 Risk allocation	9
1.7 What should a properly written construction contract cover?	10
1.7.1 FIDIC contracts	11
1.7.2 Programme	12
1.7.3 Delays and extensions of time	12
1.7.4 Delay damages	13
1.8 Tailoring the contract	14
 2 Risk	 15
2.1 How risk may be allocated	15
2.2 The 'traditional' approach to risk	16
2.3 EPC/turnkey projects	18
2.4 BOT-type projects	18
2.4.1 Parties to a BOT-type project	18
2.4.2 Contracts involved in a BOT-type project	20
2.5 The FIDIC Silver Book	22
2.6 Particular risks: The unforeseen and design	24
2.6.1 Unforeseeable physical conditions	24
2.6.2 Design responsibility	24
 3 Types of Construction Contract	 27
3.1 Lump sum contracts	27
3.2 Prime cost or reimbursable contracts	28

3.3	Unit price contracts	28
3.4	Target contracts	29
3.5	Which contract?	29

Part II	31
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4 The FIDIC Design-Build Contracts	33
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4.1	Some key general provisions	34
4.1.1	Communications: Clause 1.3	34
4.1.2	The law and the language of the contract: Clause 1.4	35
4.1.3	The priority of documents: Clause 1.5	35
4.1.4	Compliance with laws: Clause 1.13	36
4.2	The Employer	37
4.2.1	The right of access to, and possession of, the site: Clause 2.1	37
4.2.2	Evidence of the Employer's financial arrangements: Clause 2.4	37
4.2.3	Employer's claims against the Contractor: Clause 2.5	38
4.3	Contract administration: Clause 3	39
4.3.1	The role of the Engineer	39
4.3.2	'Determinations' in the Yellow and Silver Books	40
4.3.3	Employer's Representative in the Silver Book	41
4.3.4	The giving of instructions	41
4.4	The Contractor	41
4.4.1	The Contractor's general obligation: Clause 4.1	41
4.4.2	'The works' which must fit the intended purpose: Clause 4.1	43
4.4.3	Securing performance: Clause 4.2	43
4.4.4	Contractor's Representative: Clause 4.3	44
4.4.5	Subcontracting: Clauses 4.4 and 4.5	44
4.4.6	Setting out: Clause 4.7	44
4.4.7	Sufficiency of the Contract Price (Silver Book) or Accepted Contract Amount (Yellow Book): Clause 4.11	45
4.4.8	Unforeseeable difficulties/physical conditions: Clause 4.12	45
4.4.9	Progress reports: Clause 4.21	45
4.5	Design	46
4.5.1	The Contractor's general design obligations (Yellow and Silver Books): Clause 5.1	46
4.5.2	Contractor's documents: Clause 5.2	46
4.5.3	Contractor's undertaking: Clause 5.3	47
4.6	Staff and labour: Clause 6	47
4.7	Plant, materials and workmanship	48
4.7.1	Executing the works: Clause 7.1	48

4.7.2	Samples: Clause 7.2	48
4.7.3	Inspections: Clause 7.3	48
4.7.4	Testing: Clause 7.4	49
4.7.5	Rejection and remedial work: Clauses 7.5 and 7.6	49
4.7.6	Ownership: Clause 7.7	50
4.8	Time: commencement, delays and suspension of the works	50
4.8.1	Commencement and time for completion of the works: Clauses 8.1 and 8.2	50
4.8.2	Programme: Clause 8.3	50
4.8.3	Delays and extensions of time: Clause 8.4	52
4.8.4	Suspension of the works: Clauses 8.8 to 8.10	52
4.8.5	Prolonged suspension: Clause 8.11	53
4.9	Tests on completion	53
4.9.1	Contractor's obligations: Clause 9.1	53
4.9.2	Delayed tests: Clause 9.2	54
4.9.3	Re-testing: Clauses 9.3 and 9.4	54
4.10	Employer's taking over	54
4.10.1	Taking over of the works: Clause 10.1	54
4.10.2	Taking over of part of the works: Clause 10.2	55
4.11	Defects liability	56
4.11.1	The Defects Notification Period: Clauses 11.1 to 11.3	56
4.11.2	Failure to remedy defects: Clause 11.4	56
4.11.3	Extending the DNP: Clause 11.3	57
4.11.4	Further tests: Clause 11.6	57
4.11.5	The Performance Certificate: Clause 11.9	57
4.11.6	Unfulfilled obligations: Clause 11.10	58
4.12	Tests after completion	58
4.13	Variations and adjustments to the contract price	58
4.13.1	Right to vary: Clause 13.1	58
4.13.2	Variation procedure and value engineering: Clauses 13.2 and 13.3	59
4.13.3	Changes in legislation: Clause 13.7	59
4.13.4	Cost fluctuations: Clause 13.8	60
4.14	Payment	60
4.14.1	Interim payments: Clause 14.3	60
4.14.2	Timing of interim payments: Clause 14.7	61
4.14.3	Advance payment: Clause 14.2	61
4.14.4	Retention money: Clauses 14.3 and 14.9	61
4.14.5	Delayed payment and the right to financing charges: Clause 14.8	62
4.14.6	Financial steps after Taking Over: Clauses 14.10 to 14.13	63
4.14.7	Cessation of Employer's liability: Clause 14.14	64
4.15	Termination by the Employer	64
4.15.1	Termination for Contractor default: Clause 15.2	65

4.15.2	Valuation for works executed at date of termination: Clause 15.3	66
4.15.3	Payments after termination: Clause 15.4	66
4.15.4	Termination for convenience: Clause 15.5	66
4.16	Suspension and termination by the Contractor	66
4.16.1	Suspension: Clause 16.1	66
4.16.2	Termination: Clause 16.2	67
4.16.3	Events after termination: Clause 16.3	67
4.16.4	Payment on termination: Clause 16.4	67
4.17	Risk and responsibility	68
4.17.1	Indemnities: Clause 17.1	68
4.17.2	Contractor's care of the works: Clause 17.2	69
4.17.3	Specific Employer's risks: Clauses 17.3 and 17.4	69
4.17.4	Limitation of liability: Clause 17.6	70
4.18	Insurance	71
4.19	Force majeure	71
4.19.1	Meaning of 'force majeure': Clause 19.1	71
4.19.2	Notice: Clause 19.2	72
4.19.3	Minimising delay and the consequences of force majeure: Clauses 19.3 and 19.4	72
4.19.4	Prolonged force majeure: Clause 19.6	73
4.19.5	Release from performance under the law: Clause 19.7	73
4.20	Contractor's claims, disputes and arbitration	74
4.20.1	Contractor's claims: Clause 20.1	74
Part III		77
5	Disputes and How to Resolve Them	79
5.1	Introduction	79
5.2	Legal aspects of a construction project	79
5.2.1	The terms of the construction contract	80
5.2.2	The law which governs the construction contract	80
5.2.3	The terms of the construction contract relating to the resolution of disputes between the parties	80
5.2.4	The law of the process for resolving a dispute	81
5.2.5	Rights and liabilities that might arise independently of any contract	81
5.2.6	The law which applies to a project by virtue of its location	82
5.3	Kinds of claim	82
5.3.1	Claims for which the contract specifically provides	82
5.3.2	Claims for which the contract does not specifically provide	83

5.4	Making a claim	84
5.4.1	Do I have a claim?	84
5.4.2	If I have a claim, when do I make it?	85
5.4.3	How do I make my claim?	85
5.4.4	Summary	86
5.5	Who decides whether to accept a claim?	86
5.6	The FIDIC Dispute Adjudication Board	87
5.6.1	Scope	88
5.6.2	Appointment of the DAB	88
5.6.3	Referring a dispute	89
5.6.4	Reaching a decision	89
5.6.5	Informal opinion?	89
5.6.6	Arbitration?	90
5.7	Methods of dispute resolution	90
5.7.1	Final methods of dispute resolution	90
5.7.2	Informal methods of dispute resolution	92
5.7.3	Arbitration or litigation?	93
5.8	Arbitration	94
5.8.1	The arbitration agreement	95
5.8.2	The place of arbitration	95
5.8.3	Arbitration institutions	95
5.8.4	Commencement of an arbitration	96
5.8.5	Conduct of the arbitration	96
5.8.6	The arbitration award and challenges to the award	97
5.8.7	Enforcement of arbitral awards	98
5.9	How are international arbitrations conducted?	99
5.9.1	The traditional arbitration centres	99
5.9.2	ICC arbitration	101
<i>Appendix I</i>	<i>Yugo Design Company v Sino Industries Corporation:</i> An International Chamber of Commerce Arbitration	105
<i>Appendix IIA</i>	Rules of Arbitration of the International Chamber of Commerce	137
<i>Appendix IIB</i>	Rules of Arbitration of the Singapore International Arbitration Centre	177
<i>Index</i>		197

Preface

The aim of this Handbook is to provide concise and practical guidance on the contractual aspects of international construction and engineering projects to all those involved in negotiating and managing them.

The aim is not to present an academic textbook but to set out clearly and in straightforward language the main features of construction contracts of which anyone involved in an international project should be aware.

We illustrate many of these features by reference to the current, well-known international standard form FIDIC contracts: the contract forms published since 1999 by the Fédération Internationale Des Ingénieurs-Conseils (the International Federation of Consulting Engineers). Among these FIDIC contracts are two design-build forms, the Yellow and the Silver Books, and we examine these systematically in the second part of this Handbook. We focus on them because design-build contracting, in which the contractor takes responsibility for all or most of the design, is increasingly the norm in international projects.

This Handbook covers such basic questions as: What is a contract? How is a contract to be distinguished from the various negotiations taking place between the parties before the contract is formed? How are the risks of construction typically allocated between the parties to a construction contract? And what do features of the FIDIC Red and Silver Books, for example, tell us about risk allocation in different types of project structure? One important type of structure we look at are concession-type projects.

Disputes and how to resolve them are important features of the management of any project. If the project goes badly and one or other party suffers some detriment, how can that party pursue a claim? How might such a claim be resolved? We examine mediation, conciliation, litigation and arbitration as well as 'inter-mediate' processes such as dispute review boards in answering these questions.

Arbitration requires special attention as the principal formal means by which international construction disputes are finally resolved. We look at the different international arbitration bodies, and recent developments in international arbitration such as the growth of regional centres in the Middle East and Asia Pacific.

In order to illustrate how an international arbitration might actually work, we provide a fully worked-out example of a fictitious London-sited International Chamber of Commerce arbitration from start to finish. This includes example 'pleadings', a detailed case narrative and commentary on events, and an example arbitration award.

Foreword

Construction is an international activity. Tower cranes can be seen against the skyline of any country. Many large projects are tendered on the basis of an international tender. Those involved in such projects need some guidance on issues which arise in negotiating and managing them. In this Handbook William Godwin provides simple, practical guidance on those issues.

The handbook has chapters which cover four main topics: contract, risk, forms of contract and dispute resolution. Those chapters approach the issues from a practical viewpoint and assume little or no basic legal knowledge. For instance, the chapter of contract explains what a contract is and deals with particular features of contracts, emphasising that much depends on the system of law which applies to the contract. It refers to features of a contract such as consideration, capacity and authority as well as the topics to be covered in a construction contract. The chapter on risk looks at design and procurement risks and the chapter on forms of contract deals with the pricing mechanisms in different forms of procurement. After explaining the traditional form of contract where the design is carried out by a consultant engaged by the employer, risks are considered in engineer, procure and construct or turnkey contracts and also build, operate and transfers and build, operate, own and transfer contracts, explaining the salient features of each of those procurement methods.

The dispute resolution chapter provides a practical view of the topic, dealing with the process from claim initiation through to resolution by ADR or arbitration. William has then introduced a practical example in the form of a mock International Chamber of Commerce arbitration between a Chinese party and a Serbian party, illustrating the various steps in the process of arbitration under the ICC Rules. For those who have no practical experience of how international construction arbitrations work, this gives a useful insight into the process.

Throughout the book reference is made to the standard suite of FIDIC forms of contract and a substantial part of the book is then taken up with a commentary on various obligations by reference to the FIDIC Silver and Yellow Books. Internationally, the FIDIC forms are commonly used and are well recognised as providing balanced forms of contract. Whilst the commentary is based on these forms, the principles are applicable to similar clauses commonly found in other contracts.

This book achieves its intended purpose as a practical guide. As stated in the preface it is not an academic textbook. It cites no cases and deals with general aspects of international construction contracts rather than contracts

under a particular system of law. It is aimed at those who become involved in negotiating, drafting or dealing with international construction contracts and need assistance in understanding the process. It certainly fulfils that aim and provides a useful checklist for non-lawyers and for non-specialist lawyers who become involved in this field. It is written in an easy style whilst covering topics which involve some complexity. William is to be congratulated for providing a practical handbook which will be of great assistance in this specialist area.

Vivian Ramsey
Royal Courts of Justice, London
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William is a visiting lecturer in law at the School of Oriental and African Studies, London University and at City University London, and is an arbitration panel member of the China International Economic and Trade Arbitration Commission and the Dubai International Arbitration Centre. He is an approved adjudicator of the English Technology and Construction Bar Association.

Part I