



# FIDIC CONTRACTS SELF LEARNING TRAINING COURSE

**THE PRACTICAL APPLICATION OF  
THE 2017 EDITIONS OF  
FIDIC CONTRACT CONDITIONS**

FOR CONSTRUCTION, PLANT & DESIGN-BUILD  
AND EPC/TURNKEY PROJECT CONTRACTS  
(RED, YELLOW AND SILVER BOOKS)

**COMPREHENSIVE WORKBOOK**

INCLUDES 130 QUESTIONS AND ANSWERS

**BY ECV CONSULTANCY LTD**

AUTHOR

**DAVID HESLETT BSC (HONS), C.ENG, FICE**

FIDIC CERTIFIED TRAINER







### **DAVID HESLETT B.Sc (Hons), C. Eng. F.I.C.E.**

David Heslett is a British Chartered Civil Engineer, with 60 years of international construction experience, mainly at executive management level. He has been responsible for the construction of major infrastructure projects in over 20 countries including hydro- electric plants, water and sewage schemes, roads, airports and ports, urban infrastructure, office and commercial buildings. With this “front-line” experience he has since 1993 created his own consultancy business, ECV that offers training and management consultancy to the international construction industry with a team of experienced international engineers.

#### **Current Position**

David is the Founder and Managing Director of **ECV Consultancy Ltd**, a British Company with associates in St Petersburg, Brussels, Zagreb, Paris, Vienna, Trinidad and Krakow.

In 2000 he created and subsequently developed the FIDIC Training Modules that are used worldwide and accredited by FIDIC and based on the 1999 and 2017 FIDIC Contracts.

In the last 20 years ECV has undertaken its training courses in-person and virtually in 95 countries involving over 32,000 delegates as well as providing “in-house” courses for Funding Agencies, Government Agencies, Consultants, Lawyers and Contractors. ECV is an Affiliate of FIDIC

In addition, David leads in providing professional consultancy on contractual issues for Clients in Europe, Africa, Caribbean, and Middle East and is supported by his team of Contract experts.

#### **Prior Experience**

- |                  |   |
|------------------|---|
| <b>1990 – 93</b> | Director for Europe, for UK's largest contractor, Wimpey, responsible for developing business in Western and Central Europe.          |
| <b>1987 - 90</b> | Managing Director for UK’s leading private water process, and engineering company, Biwater, responsible for International Operations. |
| <b>1970 – 87</b> | Director for International Contractor, Kier, responsible for developing and managing construction work worldwide                      |
| <b>1962 – 70</b> | Consulting Engineer with leading UK and North American companies, working in Middle East, UK, Canada and Hong Kong.                   |

#### **Special Expertise within the International Construction Industry**

- Specialist Training in the use of FIDIC Contracts
- Tender Estimating and Contract negotiating
- Preparation of Particular or Special Contract Conditions
- Project and Financial Management of Contracts
- Preparation of Contractual Claims and Negotiations
- Dispute Adjudication and support to Parties involved with this process

Further Information is available on Website: [www.ecvglobal.com](http://www.ecvglobal.com)

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## 1. OBJECTIVES OF COURSE

FIDIC Contracts have been used since 1957 for the execution of construction works worldwide. In 1999 FIDIC introduced three new forms of Contract for Construction: Plant & Design-Build and EPC/Turnkey Projects, known as the Rainbow Suite and individually as the Red; Yellow and Silver Books representing the colours of their covers

In 2017 FIDIC has presented the 2<sup>nd</sup> editions of the Rainbow Suite for use by the worldwide construction industry

The 2017 Contracts are voluminous and complex and users are at high risk if they are not conversant with the responsibilities and risks that relate to the Parties (Employer and Contractor) and the Engineer. The text of the General Conditions for each Contract has increased by 80% as well as amendments to the retained 1999 text. In addition, there have been significant changes to the responsibilities of the Engineer (Red and Yellow Books) and the procedures relating to Claims and Disputes

ECV has prepared a course on the "Practical Application" of these three Contracts for presentation on a "face to face" basis and also in a virtual presentation format. It should be noted that the Contracts have been drafted with 90% common text for the Red and Yellow Books and 80% for the Yellow and Silver Books and so the course covers all three Contracts.

It has become apparent that the comprehensive contents of the course may also be used as a "Practical Work Book" in the application of these Contracts

The course provides not only an understanding of the use of the Contracts, but provides readers with Work Exercises to test their understanding of the Contract text.

In addition, because of the magnitude of the many procedures within the Contracts, Aide Memoires, which generally present procedures in "flow chart" format, are provided throughout the course

A compilation of answers to the Work Exercises is provided as guidance at the end of the "Workbook", but without any liability as the exact circumstances relating the use of these 2017 FIDIC Contracts is not known and will vary from project to project due to Particular Conditions and Laws.

Finally, it should be noted that FIDIC Credentialing Ltd (FCL) has been established to provide certification for practitioners and FIDIC certified trainers and also for FCL certified Contract Managers working with the FIDIC Contracts and that this course provides excellent preparation for those wishing to qualify under the FCL certification system

The author is a FCL/FIDIC Certified Trainer and Contracts Manager

## **2. FIDIC CONTRACTS 2017 EDITIONS**

The three FIDIC Contracts published in December 2017 as 2nd Editions to 1999 edition are as follows, with a brief statement of their use:

### **Conditions of Contract for Construction (Red Book)**

This Contract is recommended for buildings and engineering works designed by the Employer or by his representatives. Under the usual arrangements for this type of Contract, the Contractor constructs the works in accordance with a design provided by the Employer. However, the works may include some elements of Contractor designed civil, mechanical, electrical and /or Construction works

Normally the Employer will provide at time of tender a Bill of Quantities, with estimated quantities of the works to be executed. The actual quantities will be measured during the execution of the works for payment to the Contractor. An alternative provision is made for the works to be measured against a Lump Sum Schedule of Payments related to actual progress, but this is rarely used under this Contract

Under this Contract the Employer employs an Engineer to administer the Works

### **Condition of Contract for Plant & Design-Build (Yellow Book)**

This Contract is recommenced for 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, in accordance with the Employer's Requirements, Plant and/or other Works; which may include any combination of Civil, Building, Mechanical, Electrical and or Construction Works

Normally the Employer will make payment under this Contract through a Schedule of Payments with lump sum payments limited to the elements of the works actually completed. Under this Contract the Contractor is responsible for the evaluation of the quantities of the Works.

Under this Contract the Employer employs an Engineer to administer the Works

### **Conditions of Contract for EPC/Turnkey Projects (Silver Book)**

This Contract may be considered suitable for the provision on a turnkey basis of a process or power plant of a factory or similar facility where the Contractor designs or provides the Works in accordance with the Employer's Requirements, but takes the responsibility for these Requirements.

The payment conditions are similar to those of the Yellow Book, but this Contract contains greater risks to the Contractor

Under this Contract the Employer has less involvement in the administration of the Works and delegates this to an Employer's Representative.



### **3. STRUCTURE OF WORKBOOK AND METHODOLOGY**

#### **a) Sessions plus Introductory and Summary Comments**

##### **i) Commonality of the three FIDIC Contracts**

An advantage of the 2017 Contracts is that the great majority of the text is the same or very similar within each of the three Contracts.

In practice over 95% of the usage of the Contracts are the Construction (Red Book) and Plant & Design-Build (Yellow Book) documents, our course Sessions concentrate on these two documents and make reference to the Contract for EPC/Turnkey Projects (Silver Book) where differences apply.

##### **ii) Structure of FIDIC Contracts**

The structure of all three Contracts are the same with 21 main Clauses and 160 + Sub-Clauses. The Contracts are structured in a logical manner, starting with General Provisions, the Parties and Engineer (Employer's Representative in case of Silver Book) then followed by issues of Design (Yellow and Silver Books), Workmanship, Time Issues, Financial Issues, Termination, Exceptional Events Issues and finally Claims and Disputes.

The course is designed to follow the logical sequence of the Contract Structure as is noted in each Session's titles.

##### **iii) Session Content**

The format of each Session is as follows:

- a) An "Introduction" which outlines the content of the Session and cross references the specific Contract Clauses
- b) Course Overheads that highlight specific issues within the Contract Clauses under consideration
- c) Aide Memoires that also relate to issues raised within the Session
- d) Work Exercises that relate to the Session contents
- e) A "Summary Comments" on the Session

The above applies to each of the 8 Sessions

#### **b) Work Exercises**

After the individual Session Overheads, a series of Work Exercises are presented, which challenge the reader to provide one of three answers, Yes, No or Maybe and a Sub-Clause No (SC No) and a Sub-Clause (s) relevant to the answer.

It is recommended the Session Overheads and Summary Comments are read in conjunction with the relevant FIDIC Contract before commencing the Work Exercises.

## **Aide Memoires**

The 2017 FIDIC Contracts have introduced many complex procedures, where extensive text applies.

To assist with the understanding of these procedures we have included 22 Aide Memoires into the Work Book and list them below:

1. Communications (Sub-Clause 1.3)
2. Languages (Sub-Clause 1.4)
3. Delayed Drawings or Instructions (Sub-Clause 1.9 - Red Book)
4. Engineer's Instructions (Sub-Clause 3.5)
5. Procedures for Agreement (Sub-Clause 3.7)
6. Procedures for Determinations (Sub-Clause 3.7)
7. Unforeseeable Physical Conditions (Sub-Clause 4.12)
8. Contractors Documents (Sub-Clause 5.2 YB)
9. Remedial Work (Sub-Clause 7.5 and 7.6)
10. A + B Commencement of Works (Sub-Clauses 8.1 and 8.3)
11. Programme (Sub-Clause 8.3)
12. Tests on Completion (Clause 9.1)
13. Employer's Taking Over Works, Sections, Parts (Sub-Clauses 10.1 and 10.2)
14. Measurement (Clause 12.1 - Red Book)
15. Right to Vary and Variation Procedures (Sub-Clauses 13.3.1 and 13.3.2)
16. Application for and Issuance of Interim Payment Certificates (Sub-Clauses 14.3, 14.4 and 14.7)
17. Notice to Correct and Termination by Employer (Sub-Clauses 15.1 and 15.2)
18. Delayed Payment, Suspension and Termination by Contractor (Sub-Clauses 14.8, 16.1 and 16.2)
19. Sub-Clauses entitling the Contractor to Claim
20. Sub-Clauses entitling the Employer to Claim
21. A + B Claim Procedures for Employer and Contractor (Sub-Clauses 20.1 and 20.2)
22. DAAB Decision Procedure (Sub Clause 21.4)

**Within each Session's text references are made to the relevant Aide Memoire which is included at the end of the Sessions for easy reference.**

#### **4. SUMMARY SESSIONS WITH RELEVANT WORK EXERCISES AND AIDE MEMOIRE WITHIN EACH SESSION**

The Session titles are listed under the Contents and are divided into 8 individual Sessions.

The “Introduction” to each Session establishes the objectives of the Session and relevant parts of the Contracts that are under review. Then follow the Overheads, with key points relating to the Contract Clauses under consideration and relevant Aide Memoires.

The Work Exercises are provided following the Overheads for each Session and challenge the reader to answer questions on the application of the various Sub-Clauses.

Following each Session, the author has added additional comments that expand upon specific issues raised within the Session under “Summary Comments”.

#### **5. ANSWERS TO WORK EXERCISES**

At the end of the Workbook, we provide our answers to the individual Work Exercises with notes, where appropriate, of the relevant Sub-Clause/s.

These answers are provided without any liability to ECV Consultancy and / or the author, as they are based on the author’s interpretation of the General Conditions only. Each Employer using one of the FIDIC Contracts will state in their specific Contract details relating to the laws that apply to the Contract which may conflict with the General Conditions but take precedence. In addition, each specific Contract shall have Particular Conditions (Parts A and B) which may change the General Conditions and hence the answers to the questions.

That being said, it is anticipated that the answers will give guidance to the reader of the intent of the General Conditions in specific circumstances

**NOTE:** The Red and Yellow Books have an Engineer administering the Contract on behalf of the Employer, whereas under the Silver Book it is the Employer or his Representative. Clause 3 in the Red and Yellow Books is titled “The Engineer” and in the Silver Book “The Employer’s Administration”.

In each Session, where reference is made to the Engineer, it is to be taken to be the Employer, or his Representative in the Silver Book.

Note that in respect of Clauses 5 and 12 of the Red Book only the Engineer applies, as these Clauses are exclusive to this Contract.

Note that in respect of Clauses 5 and 12 of the Yellow and Silver Books, the main note applies.

## **6. CONSULTING SERVICES AND “IN-HOUSE” TRAINING COURSES**

### **Consulting Services**

ECV Consultancy has provided consultancy services since 1993 to all users of FIDIC Contracts, which include:

- Preparation or editing Particular Conditions for any FIDIC Contract.
- Redrafting of any specific FIDIC Contract Clauses.
- Advice on all contractual issues arising in execution of FIDIC Contracts.
- Preparation of Claims for the FIDIC Contract Parties.
- Preparation of Disputes for the FIDIC Contract Parties.
- Advice in respect of “hearing’s” relating to Disputes under FIDIC Contracts.
- Mediation services to FIDIC Contract Parties.

### **In-House Training Courses**

ECV Consultancy Ltd will prepare and present whether virtual or in-person its FIDIC accredited training courses for all users of the FIDIC Contracts. Our In-House courses have the following advantages:

- The course materials are adapted to the Users requirements.
- The course allows for optimum discussions between the ECV tutor/s and the Users participants.
- The presentation of the course may be either virtual or in person to suit the User.
- Opportunity to discuss real life contractual issues that the User may have arisen under their specific Contracts including Claims and Disputes

For more details please contact David Heslett at:

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# **SESSION 1**

**Introduction and Overview**



## **SESSION 1: INTRODUCTION**

This Session provides background to the creation and evolution of the FIDIC Contracts.

FIDIC (Fédération Internationale des Ingénieurs - Conseils) was formed by Consulting Engineering Associations from France and Belgium in 1913. However, it was not until after the Second World War in 1945 that it expanded with a total of 40 National Associations of Consulting Engineers joining the organisations with a Head Quarters in Switzerland.

In 1957 FIDIC introduced their first international Contract Conditions as infrastructure development expanded worldwide with the assistance of funding agencies such as the World Bank.

The first two Contracts produced were, *Conditions of Contract for Works of Civil Engineering Construction*, known as the Red Book because of the colour of its cover, and the FIDIC *Conditions of Contract for Mechanical and Electrical Works* known as the Yellow Book, again because of the colour of its cover

These two Contracts contained two separate parts of, *General Conditions* and *Conditions of Particular Application*, and were written in English as the official and authentic text for the purpose of translation

The Contracts were updated every 10 years with the last, fourth edition being in 1987.

The principles of the FIDIC Contracts were developed within these Contracts whereby the Parties to the Contract, the Employer and Contractor are bound by the Conditions and an Engineer, expected to be a Consulting Engineer, would administer the Contract on behalf of the Employer under a Service Contract with the Employer. A key feature in all these Contracts was that the Engineer, when required to make decisions would act "impartially".

In 1995 FIDIC introduced a new Contract called *Conditions of Contract for Design-Build and Turnkey Projects* with an Orange cover. It was in fact the prototype of the 1999 Suite of Contracts called the Rainbow Suite of Contracts. The Orange Book became obsolete with the publication of the 1999 Contracts.

### **1999 FIDIC CONTRACTS**

1999 FIDIC Contracts consist of *Conditions of Contract for "Construction* (Red Book), *Plant & Design-Build"* (Yellow Book) and *EPC /Turnkey Projects* (Silver Book). As well as the *Short Form of Contract'* (Green Book), which is for minor construction works valued up to US \$1 million. In both the case of the Red and Yellow Books the Employer engages an Engineer to administer the Contract on its behalf, whilst in the Silver Book

the administration is by the Employer's Representative, with less responsibilities than the Engineer due to the "hands off" supervisory approach under this Contract.

The 1999 Contracts departed very significantly from the previous four editions of the FIDIC Contracts, with a new presentational structure and the withdrawal of the "impartial" requirement of the Engineer. The Engineer is deemed to represent the Employer, and this is counterbalanced by the introduction of the Dispute Adjudication Board (DAB). The DAB may be full time or employed only when a dispute is declared by either Party.

All three Contracts have 20 main Clauses which are similarly presented and 160+ Sub-Clauses. The text of the "Red" and "Yellow" Books are approximately 90% the same, with only two main Clauses changed to reflect the Contractor being responsible for the detailed design of the Works. The "Silver" Book is 80% the same as the "Yellow" Book, but changes relate to transfer of additional risks to the Contractor. The principal risk changes are the Contractor's liability for the Employer's Requirements, as set out in the tender documents, the Site Data and setting out Data provided by the Employer, as well as Unforeseeable Physical Conditions that may be encountered in executing the Works.

## **2017 FIDIC CONTRACTS**

All three Contracts are based upon the 1999 Contracts, but with significant expansion of the details relating to procedures required in the execution of the Works. There is greater emphasis in ensuring the text where ever possible is the same in all three Contracts

The major change in principle in the 2017 editions is the reintroduction of the impartiality of the Engineer, whereby he/she is to act neutrally when undertaking determinations in respect of valuing such matters as Claims and Variations. Within the Guidance neutrally is clarified to mean "the Engineer treats both parties even-handedly, in a fair minded and unbiased manner" At the same time the DAB has been amended to be a full time Dispute Avoidance/ Adjudication Board (DAAB).

As some of you will be familiar with the 1999 Contracts there are comparisons in respect to Clause changes between the 1999 and 2017 Contracts. The principal change is for the 1999 Clause 20 (Claims, Disputes and Arbitration) to be split into two separate Clauses of Clause 20 (Employer's and Contractor's Claims) and Clause 21 (Disputes and Arbitration).

I trust this introduction provides you with an understanding of the development of the FIDIC Contracts since 1957.



## Virtual Course on the Practical Application of the 2017 FIDIC Editions of FIDIC Contract Conditions for Construction and Plant & Design-Build

*Reference also to the EPC Turnkey Contract*

## SESSIONS

1. Introduction and Overview
2. General Provisions - The Employer (Clauses 1 & 2)
3. The Engineer, The Contractor (Clauses 3 & 4)
4. Subcontracting, Design, Staff & Labour, Plant, Materials & Workmanship (Clauses 5 (RB & YB), 6 & 7)

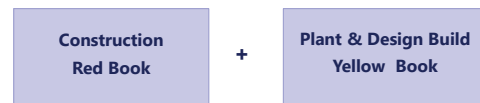
## SESSIONS (Cont.)

5. Time related Clauses (Clauses 8 -11(RB) & 12 (YB)
6. Financial Clauses (Clause 12 (RB)13 & 14)
7. Termination, Suspension, Care of the Works, Exceptional Risks & Insurance (Clauses 15 to 19)
8. Employer's & Contractor's Claims, Disputes & Arbitration (Clauses 20 & 21)

## SESSION 1

### INTRODUCTION TO 2017 FIDIC DOCUMENTS

Concentration on General Conditions of Contract:



**Comment Upon**

**EPC Turnkey Projects – Silver Book**

## History of FIDIC Fédération Internationale des Ingénieurs – Conseils

- Initial foundation in 1913 by French/Belgium
- Expanded in 1945 to include 40 National Associations of Consulting Engineers
- Published first Conditions of Contract in 1957
- In 2017 has 102 National Association Members

## FIDIC Contacts

- Headquarters are in Geneva, Switzerland with Administrative staff of 10 – Tel +41 22 7994900
- Managing Director – Nelson Ogunshakin
- President elected from Executive Council of 7 national members, for 2 year period
- Website: [www.fidic.org](http://www.fidic.org)
- Publications are at [fidic.org/pub](http://fidic.org/pub)

## History of FIDIC Conditions of Contract

- Prior to 1957, there were no internationally recognised contract conditions for construction work
- 1957 first edition of “Conditions of Contract for Works of Civil Engineering Construction” known as the ‘Red Book’ was published

## History of FIDIC Conditions of Contract

- Red Book, based upon British form of contracts, used by Institution of Civil Engineers and reflects British traditions, language and legal system
- FIDIC maintains voluntary committees to improve documents and to add further Contract Conditions for other types of construction

## Principal “Traditional” FIDIC Contract Conditions Prior to September 1999

- “The Red Book” - **Conditions of Contract for Works of Civil Engineering Construction**, (Fourth Edition 1987) reprinted 1992 (Parts 1 & 2)
- “The White Book” - **Clients/Consultant Model Services Agreement**, (Now fifth edition 2017)

## Principal “Traditional” FIDIC Contract Conditions

### Prior to September 1999 (Continued)

- “**The Yellow Book**” - **Conditions of Contract for Electrical and Mechanical Works** (Third edition 1987)
- “**Orange Book**” - **Conditions of Contract for Design-Build and Turnkey** (First and only edition 1995)

## 1999 FIDIC Contract Conditions

- *Conditions of Contract for Construction* (Red Book)
- *Conditions of Contract for Plant and Design-Build* (Yellow Book)
- *Conditions of Contract for EPC Turnkey Projects* (Silver Book)
- *Short Form of Contract* (Green Book)

## 2017 FIDIC Contract Conditions 2<sup>nd</sup> Edition to 1999 Contract

- **Conditions of Contract for Construction** (Red Book)
- **Conditions of Contract for Plant and Design-Build** (Yellow Book)
- **Conditions of Contract for EPC Turnkey Projects** (Silver Book)
- No change to **Short Form of Contract**

## Overview of 2017 Contracts

- The 2017 Conditions have generally kept the same format as that of the 1999 Editions
- However, the overall text is significantly increased by approximately 80% to 83%
- Much of the retained 1999 text has also been changed or amended

## Summary of Clause Changes

Edition	No of Clauses	No of Sub Clauses	No of Pages	No of DAB - DAAB Pages	Total page (% increase)
1999 Red	20	163	62	6	68
2017 Red	21	168	106	17	123 (80%)
1999 Yellow	20	167	63	6	69
2017 Yellow	21	174	109	17	126 (83%)

## Clause Descriptions

Clause No.	Red / Yellow 1999 Clause Names	2017 Red/Yellow Clause Names	Change in Sub Clauses
1	General Provisions	General Provisions	+ 2
2	The Employer	The Employer	+ 1
3	The Engineer	The Engineer	+ 3
4	The Contractor	The Contractor	- 1
5RB	Nominated Sub Contractors	Subcontracting	- 2
5 YB	Design	Design	Nil
6	Staff & Labour	Staff & Labour	+ 1

## Clause Descriptions – (Cont.)

Clause No.	Red / Yellow 1999 Clause Names	2017 Red/Yellow Clause Names	Change in Sub Clauses
7	Plant, Materials & Workmanship	Plant, Materials & Workmanship	Nil
8	Commencement, Delays & Suspension	Commencement, Delays & Suspension	+ 1
9	Tests on Completion	Tests on Completion	Nil
10	Employer's Taking Over	Employer's Taking Over	Nil

## Clause Descriptions - (Cont.)

Clause No.	Red / Yellow 1999 Clause Names	2017 Red/Yellow Clause Names	Change in Sub Clauses
11	Defects Liability	Defects after Taking Over	Nil
12 RB	Measurement & Evaluation	Measurement & Valuation	Nil
12 YB	Tests after Completion	Tests after Completion	Nil
13	Variations & Adjustments	Variations & Adjustments	- 1
14	Contract Price & Payment	Contract Price & Payment	Nil

## Clause Descriptions - (Cont.)

Clause No.	Red / Yellow 1999 Clause Names	2017 Red/Yellow Clause Names	Change in Sub Clauses
15	Termination by Employer	Termination by Employer	+ 2
16	Suspension & Termination by Contractor	Suspension & Termination by Contractor	Nil
17	Risk & Responsibility	Care of the Works & Indemnities	Nil
18	Insurance	Exceptional Events	N/A
19	Force Majeure	Insurance	N/A

## Clause Descriptions - (Cont.)

Clause No.	Red / Yellow 1999 Clause Names	2017 Red/Yellow Clause Names	Change in Sub Clauses
20	Claims, Disputes & Arbitration	Employer's & Contractor's Claims	- 6
21	N/A	Disputes & Arbitration	+ 8
Note: Text for Red & Yellow Contracts approximately 95% the same			
Silver Book approx. 80% same as Yellow Book			

## FIDIC's Explanation for Increase in Text

**Under Preface Notes FIDIC advise new text provides:**

- Greater detail and clarity on the requirements for notices and other communications
- Provisions to address Employer's and Contractor's claims equally and separate from disputes
- Mechanism's for dispute avoidance
- Detailed provisions for quality management

## Impact of Increase in Text of General Conditions

- Whilst the number of Sub Clauses has not changed significantly, most have been expanded and amended.
- Many detailed procedures have been introduced
- Time bars have been extended

**USERS NEED TO STUDY CONTRACTS CAREFULLY AS 2017 CONTRACTS ARE SUBSTANTIALLY DIFFERENT IN THEIR APPLICATION TO 1999 CONTRACTS**

## Impact of Changes in Text for Dispute Adjudication Board (DAB)

- The DAB renamed Dispute Adjudication/Avoidance Board (DAAB)
- The text the same in Red, Yellow & Silver Books
- Meant to be a standing Board appointed unless stated otherwise within 28 days of the Letter of Acceptance
- Ad Hoc DAB option discouraged

## Contents of the 2017 Contracts

**Acknowledgements Notes (Replaces Foreword, but includes flow charts for illustrative purposes only)**

**General Conditions including:**

- Clauses 1 to 21
- Appendices: General Condition of Dispute Avoidance/Adjudication Agreement
- Annex: DAAB Procedural rules
- Index of Sub Clauses

## Contents of the 2017 Contracts (Cont.)

**Guidance for Preparation of Particular Conditions:**

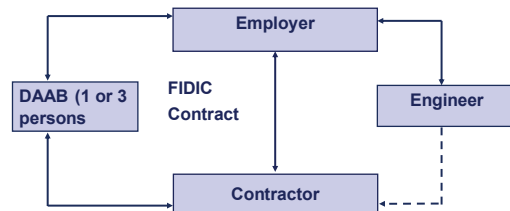
- Introductory Guidance Notes
- Particular Conditions Part A Contract Data (replaces 1999 Appendix to Tender)
- Particular Conditions Part B Special Provisions Notes on the Preparation of Tender Documents Notes on the Preparation of Special Provisions

**Note:** Major expansion of details required in Contract Data, to be available to Tenderer

## Contents of the 2017 Contracts (Cont.)

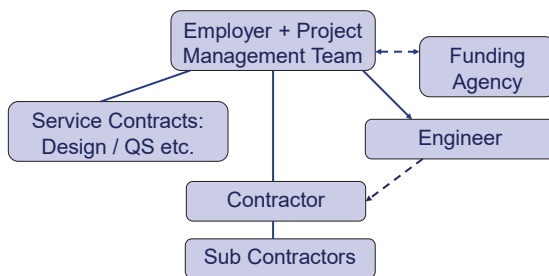
- Advisory Notes to users of FIDIC Contracts where the project is to include Building Information Modelling Services (BIM)
- Annexes: - Forms of Security – similar to 1999 Forms
- Forms for:
  - Letter of Tender
  - Letter of Acceptance
  - Contract Agreement
  - DAAB Agreement (one or three members)

## Contract Structure for 2017 Contracts



Notes: Engineer should be appointed prior to Letter of Acceptance  
DAAB to be appointed by date in Contract Data

## Project Contract Structure



## Particular Conditions Part A - Contract Data

- Replaces Appendix to Tender in 1999 Contract and extended from 3 to 5 pages

Key financial information provided with Employer required to state figures rather than included in General Conditions except as default options

Employer to state its financial arrangements

## Contract Data (Cont.) Key Financial Data

- Performance Security - % of ACA so only completed after Contract Award
- Delay Damages (DD) Sum per day
- Maximum amount of DD – Sum
- Cost plus profit - % profit
- Total amount of Advance Payment as % ACA
- Payment time details
- Currency proportions
- Insurance deductibles & amounts

## Contract Data (Cont.) Key Non Financial

- Names and addresses of Parties and Engineer for communications
- Time for completion – days
- Defects Notifications Period – days
- Ruling language
- Language of Communications
- Contract Law
- Access to Site after Letter of Acceptance - days

## **Contract Data (Cont.)** **Key Non Financial**

- Method of Measurement
- Time for appointment of DAAB
- List of proposed members of DAAB – by Employer and by Contractor (three allowed for each)
- Number of DAAB members
- Appointing entity for DAAB members

### **Definition of Sections and details if relevant**

## **Particular Conditions** **Part B – Special Provisions**

**FIDIC strongly recommend that the Employer, the Contractor and the drafters of the Special Provisions take due regard of the five FIDIC GOLDEN PRINCIPLES:**

**GP1:** The duties, rights, obligations, rules and responsibilities of all the Contract Participants must be generally as implied in the General Conditions and appropriate to the requirements of the project

**GP2:** The Particular Conditions must be drafted clearly and unambiguously

## **Special Provisions**

**GP3:** The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions

**GP4:** All time periods specified in the Contract must be of reasonable duration for Contract Participants to perform their obligations

**GP5:** All formal disputes must be referred to a Disputes Avoidance / Adjudication Board for a provisionally binding decisions as a condition precedent to arbitration

## **Notes on Principles of** **2017 Silver Book**

**The principles of the 1999 Silver Book are retained and include:**

- No Engineer and the Employer may appoint a Representative to administer the Contract

## **Notes on Principles of 2017** **Silver Book (Continued)**

- The Employer deals directly with the Contractor in respect to Claims but the Employer's Representative undertakes responsibilities under Agreement /Determinations (SC 3.5.SB)
- The Contractor takes responsibility for the Employer's Requirements with minor caveats (SC 5.1)

## **Notes on 2017 Principles** **of Silver Book (Continued)**

- The Contractor takes the liability for the Unforeseeable Difficulties (SC 4.12) and is responsible for verifying Site Data (SC 2.5 & 4.10)
- The Employer may Review the Contractors Documents for compliance with the Contract (SC 5.2)



# ECV Module 2-1 Virtual Course

## Work Exercises

### Session 1

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## Work Exercises - Module 2-1 - Session 1

### Session 1 - Exercise 1-1: Introduction & General Contractual Issues

No.	Questions	Yes	No	Maybe	SC No
a)	Do the Particular Conditions take precedence over the general conditions?				
b)	Does the Bill of Quantities take precedence over the Specification within the Red Book Contract?				

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## Work Exercises - Module 2-1 - Session 1

### Session 1 - Exercise 1-1: Introduction & General Contractual Issues-Continued

No.	Questions	Yes	No	Maybe	SC No
c)	Is the Employer at time of tender allowed to change the time periods stated within the Contracts?				
d)	Is an Employer entitled to change the risk allocation between the Employer and Contractor within the FIDIC Contracts?				

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 2: Contract Data

No.	Questions	Yes	No	Maybe	SC No
a)	May the Employer appoint one of its employees as the Engineer under the Red/Yellow Books?				
b)	Does the Employer only provide his financial arrangements for the project when requested by the Contractor?				

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 2: Contract Data - Continued

No.	Questions	Yes	No	Maybe	SC No
c)	Are Delay Damages per day % of the Accepted Contracted Amount?				
d)	Does the Contractor have to complete any items in the Contract Data?				

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 3: General

No.	Questions	Yes	No	Maybe	SC No
a)	Is the Contract Price the same as the Accepted Contract Amount (ACA) ?				
b)	Is the period for scrutiny of the Employer's Requirements in the Yellow Book measured from Commencement Date?				

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 3: General - Continued

No.	Questions	Yes	No	Maybe	SC No
e)	Is the period for the appointment of the DAAB measured from Commencement Date?				
d)	At time of Tender can the Employer provide the values of the Sections (if any) in terms of the ACA of the Works?				

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 4: General

No.	Questions	Yes	No	Maybe	SC No
a)	Do Tenderers under the Yellow Book have to ascertain that there are no errors or defects in the Contract Documents before submitting their tender?				
b)	May the Employer dispense with the DAAB and substitute another form of dispute settlement?				
c)	Is the Contractor responsible for evaluating the quantities in a Yellow Book Contract and taking this risk prior to Contract Award?				

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## SESSION 1: SUMMARY COMMENTS

- The 2017 2<sup>nd</sup> Edition Contracts, whilst based upon the 1999 FIDIC 1<sup>st</sup> Edition Contracts, are substantially amended and expanded and should be treated as new Contracts
- Whilst the structure of the 2017 and 1999 Contracts remains very much the same, many of the procedures such as Variations and Claims have been expanded and elaborated in the 2017 Contracts
- The main change in principle is requiring Engineer to act “neutrally” when undertaking its duties under Sub-Clause 3.7 (Agreement and Determinations)
- Other key changes include making the Employer’s Claim procedures the same as those of the Contractor and requiring the Dispute Board to be appointed at the start of the Contract and giving it power to provide “informal assistance. The DAB is renamed the Dispute Avoidance /Adjudication Board (DAAB)
- The Appendix to Tender in the 1999 Contracts is replaced with Part A of the Particular Conditions and the content significantly increased
- Key additional items within Part A include details of Employer’s financial arrangements; limit on value of subcontractor; method of measurement; insurance deductibles and requirement for a list of proposed DAAB Members nominated by both Employer and Contractor
- Key amendments to previous Appendix to Tender items include, time for access to Site given from Letter of Acceptance, Delay Damages as sum not a % of Final Contract Price, periods of payment of IPC’s and Advance etc. in days
- The drafting of Part B of the Particular Conditions, Special Provision are to comply with the FIDIC Golden Principles which are included in the Guidance notes
- The risks balance between the Contractor and Employer remains much as in the 1999 Contracts in all three 2017 Contracts. One anomaly to this and Golden Principle 3 is the entitlement of the Employer to transfer Unforeseeable operations of the forces of nature to the Contractor via Part A of the Particular Conditions

## **SESSION 2**

**Clause 1: General Provisions**

**Clause 2: The Employer**



## **SESSION 2: INTRODUCTION**

### **Clause 1: General Provisions**

The Contract has doubled the number of definitions from the 1999 editions, with notable additions listed in the course. It is to be remembered that a FIDIC defined term starts with a capital letter within the text.

FIDIC have not introduced a specific clause relating to the Contract Award Date, but instead refer to when the Contract becomes effective within the definitions under “Letter of Acceptance”. It should be noted there are two alternatives relating to when the Contract becomes effective under Red and Yellow Books, namely “Letter of Acceptance” or “Contract Agreement”, and the Employer should have clarified this in Part B Special Provisions. Under the Silver Book the Contract becomes effective only when the Contract Agreement is signed by both Parties.

FIDIC, up until the 1999 Contracts, had only one language as the authorised language for use within the Contract. The 2<sup>nd</sup> edition continues with the 1999 editions introduction of both a “ruling language” and a “language of communication”, although the latter is not defined. From the Work Exercises it is clear that having two languages significantly complicates the administration of the Contract and so strongly advise to have only one language for all contractual correspondence, as listed in Sub-Clause 1.3

This Session considers the key Sub-Clauses in Clause 1 of the Contracts. It should be noted that with the Sub-Clauses 1.8 and 1.9 issues relating to late issuance of Drawings/Instructions in Red Book and errors in Employer’s Requirements in Yellow Book (does not apply in Silver Book as risk of Contractor), are surprisingly covered in this General Section.

### **Clause 2: The Employer**

The second part of this Session relates to the Sub-Clauses covered under Clause 2, The Employer.

It is noted that in respect of the Red and Yellow Books the Employer delegates the administration of the Contract to the Engineer, whilst in the Silver Book to the Employer’s Representative.

Under Sub-Clause 2.1, the right of Access to the Site is explained. It should be noted that the time for such access is stated in Part A - Contract Data, and refers to days from the receipt of the Letter of Acceptance and not, as in the 1999 Contract, from the Commencement Date. This I consider to be an error. In addition, note that possession not just access is also required, which may have to be shared with other Contractors.

The Sub-Clause relating to the Employer's Financial Arrangements has been substantially changed from the 1999 Editions. The Employer has to state in Part A - Contract Data the arrangements for financing the Contract. There is also provision for the Contractor to seek further evidence the Employer has sufficient funds should a Variation exceed 10% of the Accepted Contract Amount (ACA), or an accumulative total of Variations exceed 30% of ACA. No reference is made to other types of increase to the ACA which appears strange. There is also no cross-reference to Sub-Clause 16.1 if the Employer fails to provide such details within 28 days, but the outstanding amount due is estimated by the Engineer not the Contractor. This may lead to a Dispute.

These editions have transferred the first part of the 1999 Sub-Clause 4.10, Site Data, to a new Sub-Clause 2.6. This is very relevant to work undertaken under the "Red" and "Yellow" Books, as the liability for the accuracy of such Data (not the interpretation) is with the Employer. This is not the case in the "Silver" Book where the Contractor takes this liability.

## SESSION 2

### Clauses 1 to 2

- General Provisions
- The Employer

Red /Yellow Books)

## General Provisions (Clause 1)

### Sub Clause 1.1 Definitions

- Red Book - 88No. (SC 1.1.1 to 1.1.88)
- Yellow Book - 90No. (SC 1.1.1 to 1.1.90)
- Silver Book - 80 No. (SC1.1.1 to 1.1.80)

Differences due to Contract type, but common definitions the same for each Contract

## Sub Clause 1.1 Definitions (Continued)

New definitions to 1999 Contracts include:

Claim; Cost plus Profit; Dispute;  
Exceptional Event; Key Personnel;  
Notice; Programme; Review; Special Provisions.

All need to be read to understand FIDIC meaning for these terms

## Contract Award Date (CAD)

### A) BY LETTER OF ACCEPTANCE SC 1.1.50



### B) BY CONTRACT AGREEMENT S.C 1.6



Note: No LoA in Silver Book, only Contract Agreement (SC 1.6)

## Sub Clause 1.2 - Interpretation

This includes clarification of:

- Words indication person or parties shall be interpreted as referring to natural and legal persons ( including corporations and other legal entities)
- In any list in these Conditions where the second last item of the list is followed by "and" or "or" or "and/or" then all the list items going before shall also be read as if they are followed by "and" or "or" or "and/or"

## Sub Clause 1.3 - Notices & other Communications

- Notices & all other communications must comply with the procedure in this Sub Clause
- Submissions may be in writing signed by authorised personnel or by electric transmissions agreed by Parties & Engineer
- Notices are to be identified as a Notice
- Other communications to be identified by references to Contract

### **Sub Clause 1.3 - Notices & other Communications (Cont.)**

- Methods of transmission if not electronic are to be receipted
- To be sent to recipients stated in Contract data or otherwise notified in writing
- Electronic transmission shall be deemed to be received on the day after transmission
- All Notices and other types of communication shall "not be unreasonably withheld or delayed"

**See Aide Memoire No. 1**

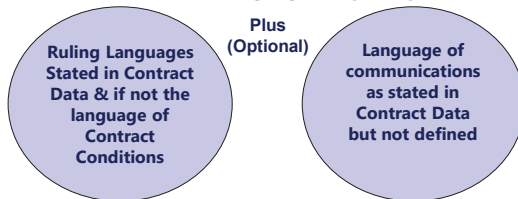
### **Sub Clause 1.4 - Law**

- The Law of the country is to be stated in the Contract Data
- The compatibility of the country Law and the FIDIC documents should be assessed by the Employer and ECV recommend any conflicts are corrected in the Special Provisions

**Note: See SC's 1.1.49 / 1.13/ 13.6**

### **Sub Clause 1.4 - Language**

Two possible Languages may apply

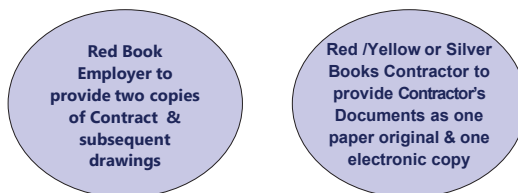


**See Aide Memoire No. 2 for references to language with Contract**

### **Sub Clause 1.7- Assignment**

- As with the 1999 Contract there is a provision for either Party to assign the whole or part of the Contract at the sole discretion of the other Party.
- No details are provided and so a specific agreement would need to be created for such an assignment.

### **Sub Clause 1.8 - Care & Supply of Documents**



If either Party or Engineer become aware or errors or defects of technical nature, must promptly give notice to the other Party.  
No procedure to follow

### **Sub Clause 1.9 Delayed Drawings or Instructions (RB)**

**The SC has two main parts:**

- Notice by the Contractor to Engineer of requirement for drawing/s or instruction/s in order to avoid delay or disruption to the Works, stating reasons and impact of delay
- Should drawing/s or instruction/s not be received in reasonable time stated by the Contractor then Contractor may claim under SC 20.2 with "Notice of Claim"

**See Aide Memoire No. 3**



### **Sub Clause 1.9 - Errors in Employer's Requirements (YB)**

**This SC refers to two situations:**

- a) Error found in scrutiny period stated in SC 5.1, then Contractor to give "Notice of Claim" to Engineer within the period stated in the Contract Data (if not stated 42 days) from the Commencement Date
- b) Errors etc. found after the scrutiny period

**Note: this SC does not exist in SB**

### **Sub Clause 1.9 – (YB) (Cont.)**

- Contractor gives Notice of error etc. & Engineer to proceed under SC 3.7 to agree or determine responsibility & measures (if any) to be taken
- If measures are instructed then treated as a Variation under SC 13.3.1
- If the Contractor suffers delay and/or incurs costs not covered by Variation then must claim under SC 20.2

### **Sub Clause 1.13 Compliance with Laws**

- Each Party has to obtain permits etc. that are its responsibility
- When the Contractor is required in Contract to provide assistance to the Employer to obtain permits and fails to do so, then the Employer may claim
- If the Contractor has provided assistance and then is delayed, he may claim

### **Sub Clause 1.14 Joint and Several Liability**

**If the Contractor is a Joint Venture (defined SC 1.1.46)**

- Members of JV shall be jointly & severally liable to Employer for performance of Contract
- JV leader to be nominated & have authority to bind all JV Members
- JV membership or responsibilities not to be changed without Employer's consent

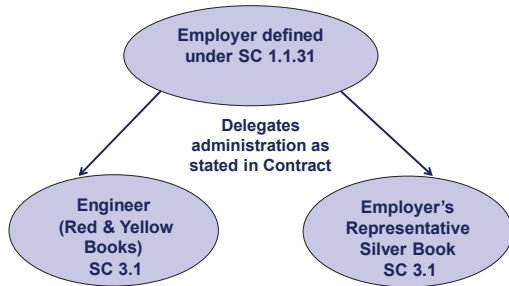
### **Sub Clause 1.15 Limitation of Liability**

- Neither Party shall be liable to 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 except under items listed in SC 1.15
- Limit of liability is sum stated in Contract Data (or ACA)

### **Sub Clause 1.16 Contract Termination**

"Subject to any mandatory requirements under the governing law of the Contract, termination of the Contract under any Sub Clause of these conditions shall require no action of whatsoever kind by either Party other than as stated in the Sub Clause"

## Clause 2 – The Employer



## Sub Clause 2.1 Right of Access to the Site

- Site requires clear boundaries
- Right is for access to & possession of all parts of the Site at times stated in Contract Data
- Employer may withhold rights until Performance Security received
- The Contractor may not have exclusive use of the Site but restrictions must be in Special Provisions
- Failure to provide access and/or possession entitles Contractor to claim under SC 20.2

## Sub Clause 2.2 - Assistance

**Employer is required on the request of the Contractor to provide reasonable assistance for:**

- Obtaining copies of the laws of the Country not readily available (not clear in what language & only after Contract Award!)
- Obtaining permits etc. to assist Contractor comply with SC 1.13, importation of Goods through customs & exportation of Contractor's Equipment

## Sub Clause 2.4 Employer's Financial Arrangements

- Employer's financing arrangements to be stated in Contract Data (small space!)
- If Employer tends to make material change to his financial arrangements, then must give immediately Notice to the Contractor with details
- Silent as to what happens if Contractor dissatisfied with these changes

## Sub Clause 2.4 - (Cont.)

- Contractor may request for Employer to provide reasonable evidence within 28 days of receipt of request that financial arrangements have been made and being maintained to the part of Contract Price remaining to be paid at that time, as estimated by the Engineer if 3 conditions stated in SC apply
- No cross reference to SC 16.1

## Sub Clause 2.5 Site Data & Items of Reference

- Employer to provide all relevant data in his possession on:
  - Topography of the Site
  - Sub-surface, hydrological climate and environmental conditions at Site
 Cross reference SC 4.10 (RB & YB)
- Original survey control points, lines & levels of reference to be specified as cross referenced SC 4.7
- Silver Book requires Contractor to take liability for all Site Data



# ECV Module 2-1 Virtual Course

## Work Exercises

### Session 2

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 -1: Definitions

No.	Questions	Yes	No	Maybe	SC No
a)	Is there a definition that clarifies when the Contract becomes effective?				
b)	Is there a qualification on the definition what constitutes a Dispute in the Definitions?				
c)	Does the definition of Site require the boundaries of the Site to be provided on Drawings?				
d)	Is Approval a defined term?				

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 2: Communication and Contract Languages

No.	Questions	Yes	No	Maybe	SC No
	In a Red Book Contract the ruling language is English and the language of Communications is Spanish.				
a)	Does the Engineer give Notice etc. only in English?				
b)	May the Contractor's Representative (CR) give notice in the language for Communications only?				
c)	If the Engineer requires a Notice from CR translated into English is this a Variation?				

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 3: Drawings and Instructions

No.	Questions	Yes	No	Maybe	SC No
	On a Red Book Contract for a Euro 50 million motorway the Contractor upon being awarded the Contract wrote to the Engineer seeking all Drawings to complete the Works. The Engineer replied it was unreasonable to request all the Drawings at the start of Contract				
a)	Was the Contractor entitled to all the Drawings at the start of the Contract?				

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 3: Drawings and Instructions - Continued

No.	Questions	Yes	No	Maybe	SC No
b)	If the Contractor is denied all the Drawings may it make a Claim?				
c)	If the Contractor discovers a design error in the Drawings must it notify the Employer?				

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 4: Right of Access to the Site

No.	Questions	Yes	No	Maybe	SC No
	In either the Red or Yellow Book Contracts may the Employer withhold right of access or possession of the Site if the Contractor has failed to provide at the Commencement Date?				
a)	Health and Safety Manual?				
b)	Quality Management System?				
c)	Insurance for the Works?				
d)	The DAAB has not been appointed?				

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 5: Employer's Financial Arrangements

No.	Questions	Yes	No	Maybe	SC No
a)	Is the Contractor entitled to receive reasonable evidence that Employer has the funds to meet an Engineers determination that a Claim exceeds 10% of ACA				
b)	If the Employer fails to make a payment of the Claim under SC 14.7 has the Contractor to abide by the requirement of SC 2.4 b only				
c)	If Contractor disagrees with Engineer's estimate of the outstanding value of Contract Price to be paid, may he declare a Dispute?				

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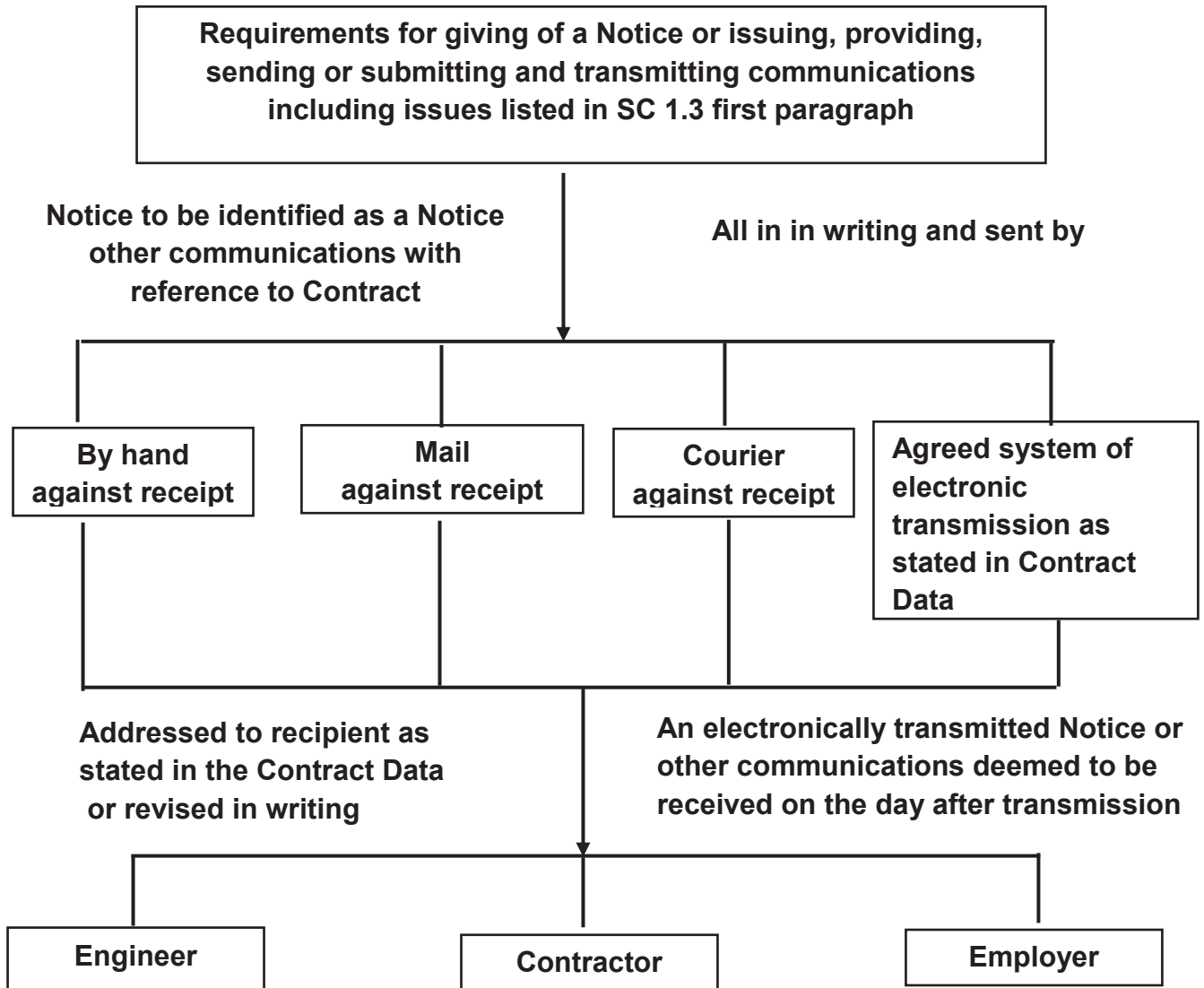
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# ECV AIDE MEMOIRE NO. 1

## Communications - Sub Clause 1.3



- Certificates to be sent to both Parties
- Notices issued by Party or Engineer to be copied to other Party and Engineer as is the case

Notice or other types of determinations shall not be unreasonably withheld or delayed





## ECV AIDE MEMOIRE NO. 2

### Use of Language - Sub Clause 1.4

The Contract requires a ruling language (RL) to be stated in the Contract Data, which represents the language in which all or part of the Contract is written

In addition the Contract allows for another language to be used called the “language for communications” (LC) this should be stated in the Contract Data but not defined

Reference to the above two languages (or not) are as follows:

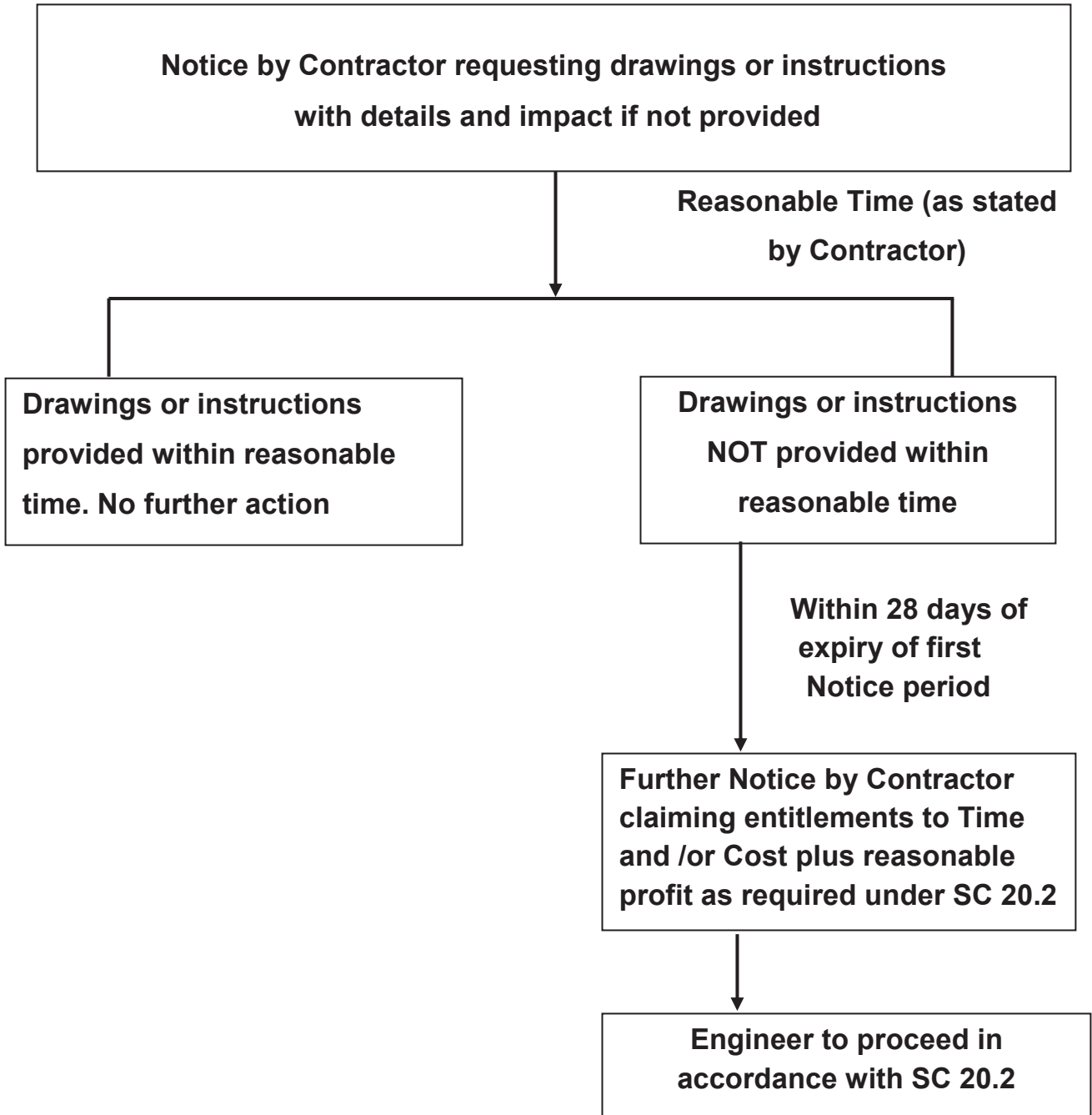
<u>Clause No.</u>	<u>Description</u>	<u>RL</u>	<u>LC</u>	<u>Silent</u>
<b>1.3</b>	<b>Communications</b>	-	-	X
<b>2.3</b>	<b>Employer’s Personnel</b>	-	-	X
<b>3.1</b>	<b>Engineer</b>	X	-	-
<b>3.3</b>	<b>Engineer’s Representative</b>	X	-	-
<b>3.4</b>	<b>Assistants of Engineer</b>	-	X	-
<b>4.3</b>	<b>Contractor’s Representative</b>	-	X	-
<b>Clause 4 - Several</b>	<b>There are several SC where language is relevant including:</b> <b>4.4 Contractor’s Documents (RB)</b> <b>4.4 Subcontractor’s &amp; Nominated Subcontractor’s (YB)</b> <b>4.6 Cooperation</b> <b>4.8 Health &amp; Safety Obligations</b> <b>4.9 QM Systems</b> <b>4.20 Progress Reports</b>	-	X	-
<b>5.0 RB</b>	<b>Sub-Contracting</b>	-	-	X
<b>5.2 YB</b>	<b>Contractor’s Documents</b>	-	X	-
<b>5.5 YB</b>	<b>Training</b>	-	X	-
<b>5.6 YB</b>	<b>As Built Documents</b>	-	X	-
<b>5.7 YB</b>	<b>Operation &amp; Maintenance Manuals</b>	-	X	-
<b>6.8 &amp; 6.11</b>	<b>Contractor’s Superintendence &amp; Key Personnel</b>	-	X	-
<b>14.3</b>	<b>Application for Interim Payment Certificate</b>	-	-	X
<b>14.4 YB</b>	<b>Schedule of Payments</b>	-	-	X
<b>14.6</b>	<b>Issue of Interim Payment Certificate etc.</b>	-	-	X
<b>DAAB</b>	<b>Warranties in DAAB Agreement</b>	-	X	-
<b>21.6</b>	<b>Arbitration</b>	X	-	-

There are many Sub Clauses that will be affected if languages used in the RL & LC are different. Also, if RL & LC are the same there are issues such as Health & Safety Manual, which may be in a different Language!



## ECV AIDE MEMOIRE NO. 3

### Delayed Drawings or Instruction - Sub Clause 1.9 - Red Book



**Note: Sub Clause 1.9 Yellow Book is for errors within Employer's Requirements found after scrutiny period**



## SESSION 2: SUMMARY COMMENTS

- Important to always refer to the text of defined terms as may be different to what may be assumed. An example is Cost in Sub-Clause 1.1.19, which is very relevant in respect to Variations and Claims.
- Engineer no longer uses the term approval but instead uses new defined terms of No-Objection and Review. Likewise, the Notice of Dissatisfaction has been introduced which applies to Engineer's determinations and DAAB decisions
- The definition of Dispute is, I suggest, confused, and should be reduced to just items a), b) and c) without the subsequent text that implies that a DAAB or Arbitrator may at a later stage consider the Dispute void.
- Employers to clarify in the Special Provisions how a Contract becomes effective, i.e. by Letter of Acceptance or by signature to Contract Agreement. I recommend an extra Sub-Clause called "Contract Award Date" to make clear when the Contract becomes effective. This term is used in the DAAB Contract between the Parties and the DAAB member
- Sub-Clause 1.2 provides explanations on the use of words such "persons, shall, may and consent". Plus clarifies that in a list of items if the word and is used after the penultimate item then all items apply to the issue whereas if it was or then the items apply individually
- Sub-Clause 1.3 deals with communications which must all be in writing. The term Notice is defined and methods of sending communications detailed. See Aide Memoire No 1
- Sub Clause 1.4 deals with Law and language. The text permits the Employer to nominate a ruling language and a language of communication. The ruling language is that in which the Contract Documents are written whilst the language of communication is not defined nor its purpose. The Engineer and his Representative (if any) are to be fluent in the ruling language but the Contractor's Representative in the language of communication. See Aide Memoire No 2 for details
- Recommend only one language (ruling language) is used, but if a second language of communications is adopted it should not have contractual standing, and all correspondence under Sub-Clause 1.3 to be in ruling language, and translated if required into second language for assistance only. Note there is confusion in that the DAAB members are to be fluent in the language of communication whilst arbitrator who may overrule adjudicators decisions are to be fluent in the ruling language
- Note that under Sub- Clause 1.9 of the Red Book the Contractor has to give a Notice for any Drawings and instructions required within a reasonable time for

receipt, and only after that time has expired may the Contractor seek any time or financial impact by giving a Claim Notice under Sub-Clause 20.2. See Aide Memoire No 3

- The procedure under Sub-Clause 1.9 of the Yellow Book for errors found in Employer's Requirements during the execution of the Works requires Engineer to determine if they may have been discovered by Contractor at time of tender, or in scrutiny period. No such relief in Silver Book, as Contractor takes the risk of the accuracy of Employer's Requirements.
- Procedures relating to compliance of Laws include for delays by either Party in assisting the other Party obtain necessary permits, licences etc. This may be particularly relevant under the Yellow and Silver Books where under some jurisdictions the Employer may only get a permit to commence construction once a fully detailed design had been submitted to the regulatory authority
- The Employer to state in Part A - Contract Data the time for providing Contractor access and possession of the Site. Careful to ensure not before Commencement Date, as period is from when the Contract becomes effective. If more than one Contractor has access to the Site then the Employer should clarify areas of possession for each Contractor and relevant dates. Failure by one Contractor to handover possession to another Contractor is the Employer's liability
- Recommend Employer at start of Contract perhaps at a start-up meeting offers all practical assistance to Contractor along lines stated in Sub-Clause 2.2
- The Employer to give in Part A - Contract Data its financial arrangements for funding the Contract, but may be an attached document. I suggest are limitations in text of Sub-Clause 2.4 as to why increases of 10% to Accepted Contract Amount (ACA) are just limited to Variations, and do not apply to Measurement (Red Book), Agreement and Determinations or DAAB decisions that also increase ACA by more than 10%?
- Recommend Employer under Sub-Clause 2.5 provides all Site Data available to them to the tenderers to minimise potential for Claims due to unforeseen physical conditions under Sub-Clause 4.12

**WORK EXERCISES**

**ANSWERS**

## **DISCLAIMER**

While every effort has been made to ensure that the answers provided are a correct guide, it should be understood these are based upon the General Conditions of Contract only. These may well be changed for each construction project through the Particular Conditions and the relevant Laws applicable to the Contract. The author takes no liability or responsibility for any of these answers which are provided for guidance purposes only.





# ECV Module 2-1 Virtual Course

## Work Exercises

### Session 1

## Answers

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## Work Exercises - Module 2-1 - Session 1

### Session 1 - Exercise 1-1: Introduction & General Contractual Issues

No.	Questions	Yes	No	Maybe	SC No
a)	Do the Particular Conditions take precedence over the General Conditions?	X			1.5
b)	Does the Bill of Quantities take precedence over the Specification within the Red Book Contract?		X		1.5

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## Work Exercises - Module 2-1 - Session 1

### Session 1 - Exercise 1-1: Introduction & General Contractual Issues- Continued

No.	Questions	Yes	No	Maybe	SC No
c)	Is the Employer at time of tender allowed to change the time periods stated within the Contracts?	X			
d)	Is an Employer entitled to change the risk allocation between the Employer and Contractor within the FIDIC Contracts?			X	

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 2: Contract Data

No.	Questions	Yes	No	Maybe	SC No
a)	May the Employer appoint one of its employees as the Engineer under the Red/Yellow Books?	X			1.1.35
b)	Does the Employer only provide his financial arrangements for the project when requested by the Contractor?		X		2.4 CD

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 2: Contract Data - Continued

No.	Questions	Yes	No	Maybe	SC No
c)	Are Delay Damages defined as a % of the Accepted Contracted Amount both per day and maximum?		X		8.8 CD
d)	Does the Contractor have to complete any items in the Contract Data?	X			1.3 (d) 14.15 21.1

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 3: General

No.	Questions	Yes	No	Maybe	SC No
a)	Is the Contract Price the same as the Accepted Contract Amount (ACA) ?		X		1.1.1 1.1.13 14.1
b)	Is the period for scrutiny of the Employer's Requirements in the Yellow Book measured from Commencement Date?		X		5.1 From Notice COM

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 3: General - Continued

No.	Questions	Yes	No	Maybe	SC No
c)	Is the period for the appointment of the DAAB measured from Commencement Date?		X		21.1 CD From LoA
d)	At time of Tender can the Employer provide the values of the Sections (if any) in terms of the ACA of the Works?		X		14.9 CD

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## Work Exercises - Module 2-1

### Session 1 - Exercise 1 - 4: General

No.	Questions	Yes	No	Maybe	SC No
a)	Do Tenderer's under the Yellow Book have to ascertain that there are no errors or defects in the Contract Documents before submitting their tender?	X			LoT if used
b)	May the Employer dispense with the DAAB and substitute another form of dispute settlement?	X			Before Tender
c)	Is the Contractor responsible for evaluating the quantities in a Yellow Book Contract and taking this risk prior to Contract Award?	X			14.1

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# ECV Module 2-1 Virtual Course

## Work Exercises

### Session 2

## Answers

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 3: Drawings and Instructions - Continued

No.	Questions	Yes	No	Maybe	SC No
b)	If the Contractor is denied all the Drawings may it make a Claim?		X		1.9
c)	If the Contractor discovers a design error in the Drawings must it notify the Employer?	X			1.8

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 4: Right of Access to the Site

No.	Questions	Yes	No	Maybe	SC No
	In either the Red or Yellow Book Contracts may the Employer withhold right of access or possession of the Site if the Contractor has failed to provide at the Commencement Date?				
a)	Health and Safety Manual? <b>21d after CD</b>		X		4.8
b)	Quality Management System? <b>28d after CD</b>		X		4.9
c)	Insurance for the Works?	X			19.2.1
d)	The DAAB has not been appointed?			X	21.1

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## Work Exercises - Module 2-1 - Session 2

### Session 2 - Exercise 2 - 5: Employer's Financial Arrangements

No.	Questions	Yes	No	Maybe	SC No
a)	Is the Contractor entitled to receive reasonable evidence that Employer has the funds to meet an Engineers determination that a Claim exceeds 10% of ACA?		X		2.4
b)	If the Employer fails to make a payment of the Claim under SC 14.7 is the Contractor's only remedy that of SC 2.4 b?		X		16.1
c)	If Contractor disagrees with Engineer's estimate of the outstanding value of Contract Price to be paid, may he declare a Dispute?	X			2.4 21.4

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**WORK EXERCISES**

**ADDITIONAL  
COMMENTS TO THE  
ANSWERS**

## **MODULE 2-1 ANSWERS & ADDITIONAL COMMENTS - SESSION 1**

### **Ex 1-1: Introduction & General Contractual Issues**

- a) Clearly stated in SC 1.5 "Priority of Documents".
- b) In Red Book under SC 1.5 the Specifications takes priority over Drawings and Schedule. The Bill of Quantities is a Schedule under Sub Clause 1.1.5 Definitions.

### **Ex 1-1: Introduction & General Contractual Issues (continued)**

- c) The Employer is entitled to make time and changes but under FIDIC Golden Principles Rule 4 such changes should be of "reasonable duration".
- d) Yes, but not advised under FIDIC Golden Rule 3, which recommends not to change balance of risk/reward allocation in General Conditions.

### **Ex 1-2: Contract Data**

- a) No restriction under definitions but probably conflicted under SC 3.7 where Engineer to act "neutrally".
- b) Under SC 2.4 the Employer to detail in the Contract Data his financial arrangements.

### **Ex 1-2: Contract Data (continued)**

- c) The Contract Data requires Employer to state an amount per day and a maximum amount. No reference to % of ACA but may be used.
- d) Employer to state in Contract Data any item to be completed by Contractor, but item 21.1 of nominating 3 DAAB members mandatory.

### **Ex 1-3: General**

- a) ACA is amount in Letter of Acceptance, whereas Contract Price is value of Works including all adjustments.
- b) From Notice to Commence given under SC 8.1 and minimum of 14 days before Commencement Date.

### **Ex 1-3: General (continued)**

- c) Employer to state time from when Contractor receives Letter of Acceptance in Contract Data, if not 28 days stated in SC 21.1.
- d) Only the tenderers knows the ACA so must provide percentages, if not then under SC 14.9 will not receive retention monies release.

### **Ex 1.4: General**

- a) Yes, but still required to scrutinise Employer's Requirements under SC 5.1.
- b) Not recommended by FIDIC but see Guidance SC 21.1.
- c) Tenderer submits lump sum to cover all quantities of the Works detailed in the tender documentation.

## **MODULE 2-1 ANSWERS & ADDITIONAL COMMENTS - SESSION 2**

### **Ex 2.1: Definitions**

- a) By Letter of Acceptance in Definitions.
- b) Makes definition unclear and so not helpful. Changed in 2022 Reprint Edition
- c) Not mentioned, but in practice most probably will be required.
- d) The term “approval” is avoided wherever possible in 2017 Contract.

### **Ex 2.2: Communications and Contract Languages**

- a) Engineer is to be fluent only in ruling language.
- b) No clarity as SC 1.3 Communications is silent as to which language is to be used.
- c) Again no clarity, and should have been clarified in Special Provisions if a language of communication is different to ruling language.

### **Ex 2.3: Drawings and Instructions**

- a) Under SC 1.1.30 Drawings, allows for those in Contract and “any other additional and modified drawings”

Also under SC 1.8 reference is made to “each subsequent Drawing”.

Conclusion is that not all Drawings have to be issued on award of Contract.

### **Ex 2.3: Drawings and Instructions (continued)**

- b) Contractor to first request Drawings in accordance with first paragraph of SC 1.9. Only after stated reasonable time if Drawings not supplied can then may claim under SC 20.2.
- c) Last paragraph of SC 1.8 applies, but no procedure given for actions required after notification.

### **Ex 2.4: Right of Access to the Site**

- a) Not permitted to commence any Construction until manual submitted.
- b) Does not restrict access to commencement of construction.
- c) Insurance of Works SC 19.2.1 required from Commencement Date, and injury to persons and damage to property, SC 19.2.4 before Contractor begins work on Site.
- d) As for b) above.

### **Ex 2.5: Employer's Financial Arrangements**

- a) Silent on this as well as measurement or DAAB decisions. Logic not clear for these omissions.
- b) Contractor may give notice of 21 days before suspending or reducing rate of Work
- c) Yes, under 2017 Contracts but not under 2022 Reprinted edition.





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## PROFILE OF ECV CONSULTANCY LTD

ECV was founded in 1993 to provide training and consultancy to the international construction industry

The founding partners were very experienced construction engineers David Heslett and Douglas Collier, who had held senior directorship level positions with prominent international contractors and consulting engineers

ECV concentrated initially on the markets of the former Soviet Union and with an educational partner, the University of Manchester Institute of Science and Technology, developed training bases in St Petersburg, Riga and Warsaw undertaking a wide range of construction management training as professionals in this region changed from the “command” to “market” economies

In 1999 FIDIC the internationally used construction Contracts organisation issued new Contracts. ECV, independently from UMIST, took this opportunity to develop specialist 2 day course Modules to train professionals using these Contracts. These were the first such Modules created and FIDIC accredited the ECV courses and its trainers after 2 years of successful delivery of the courses. ECV were the pioneer of delivering these courses.

There followed a major expansion by ECV of training in the use of these FIDIC Contracts and in the period since 2002 ECV has presented its courses in over 90 countries involving 30,000+ professionals. The success of the training is due to the interactive nature of the courses and the quality of the tutors who are all accredited by FIDIC

Besides the training activities which involve presenting over 50 courses per year, ECV has provided contractual consultancy to a variety of Clients working with the FIDIC Contracts. These include Funding Agencies, Employers and Contractors dealing with Contract preparation and administration, claims and disputes

In 2020 with the advent of the Covid 19 pandemic, ECV amended all its many FIDIC training courses to virtual presentation. Subsequently there have been 45 presentations to over 1600 professionals including those from World Bank, Asian Development Bank, UNOPS, ICRC, Government Ministries and Agencies and international construction industry

In 2024 “in-person” training both public and “in-House” has recommenced as well as continuing with virtual courses.

The ECV 2017 FIDIC course is now available in hard copy or e-book as a “Self Learning Training Course”

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