



دور المهندس في إدارة المطالبات والأوامر التغييرية في العقود الإنشائية

Engineer's Role in Claims & Variation Orders Management in Construction Contracts

Eng. Omar Al- Harasees
1 Oct 2024



International Federation of
Consulting Engineers (FIDIC)

Introduction to FIDIC

Founded in 1913.

Encompassing most of the private practice consulting engineers.

Promotes and implements the consulting engineering industry's strategic goals.

Members endorse FIDIC's statutes and policy statements and comply with FIDIC's Code of Ethics.

Develops and promotes business practice: Business Integrity
Management; Project Sustainability Management; Quality
Management; Risk Management

* FIDIC follows the slogan

“Quality , Integrity and Sustainability”

* and issued the so-called **behavioral rules** that must be followed & maintained in the engineering consulting work

“Code Of Ethics”



CODE OF ETHICS

RESPONSIBILITY

Clients, users and the general public
Principles of sustainable development
Dignity, standing and reputation of consulting

COMPETENCE

Knowledge and skills
Care and diligence
Only when competent

IMPARTIALITY

Impartial advice
Independent judgement
No conflict of interest

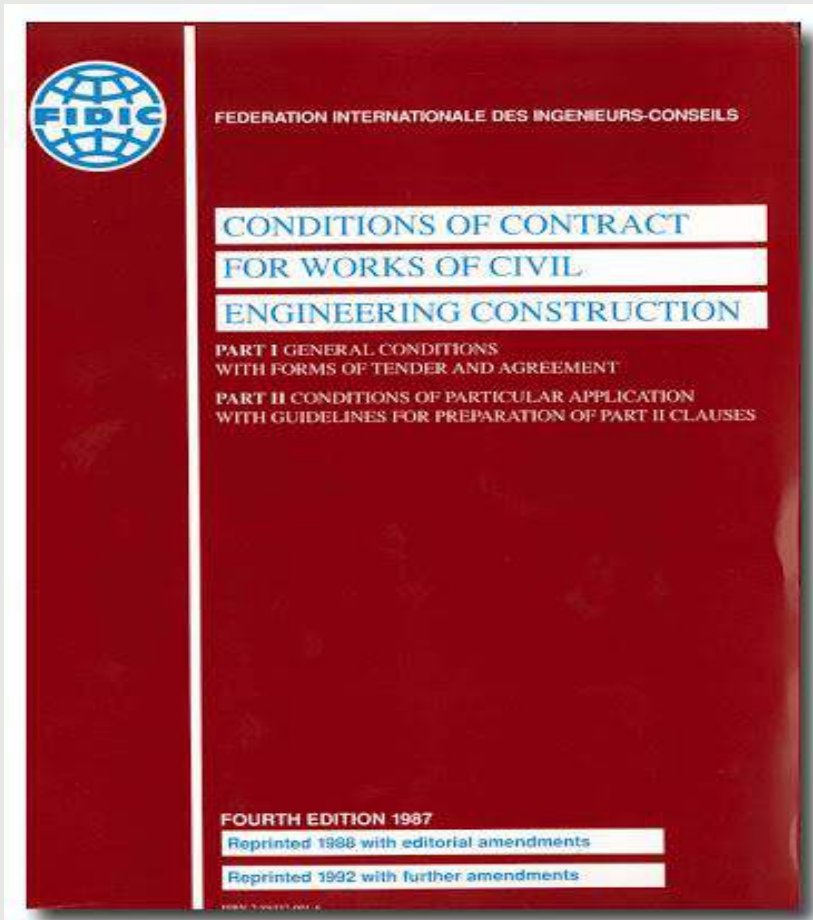
INTEGRITY

Unbiased selection
Best interest of client
Respect for agreements
Transparent remuneration

FAIRNESS

No injury to others
No cannibalism
Respect and courtesy

Red Book



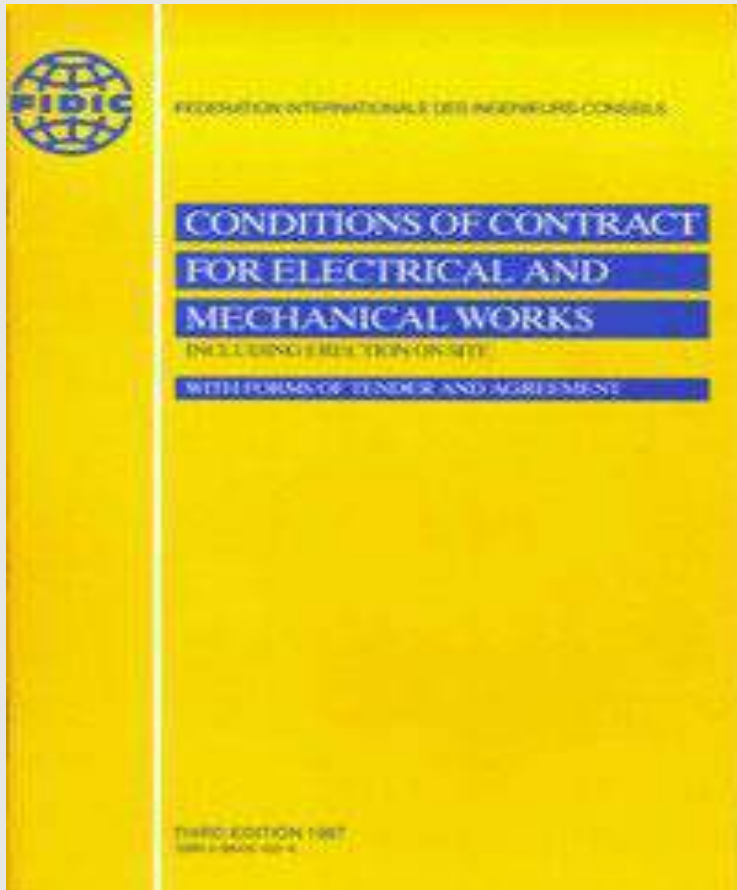
First Edition 1957

Second Edition 1969

Third Edition 1977

Fourth Edition 1987

Yellow Book

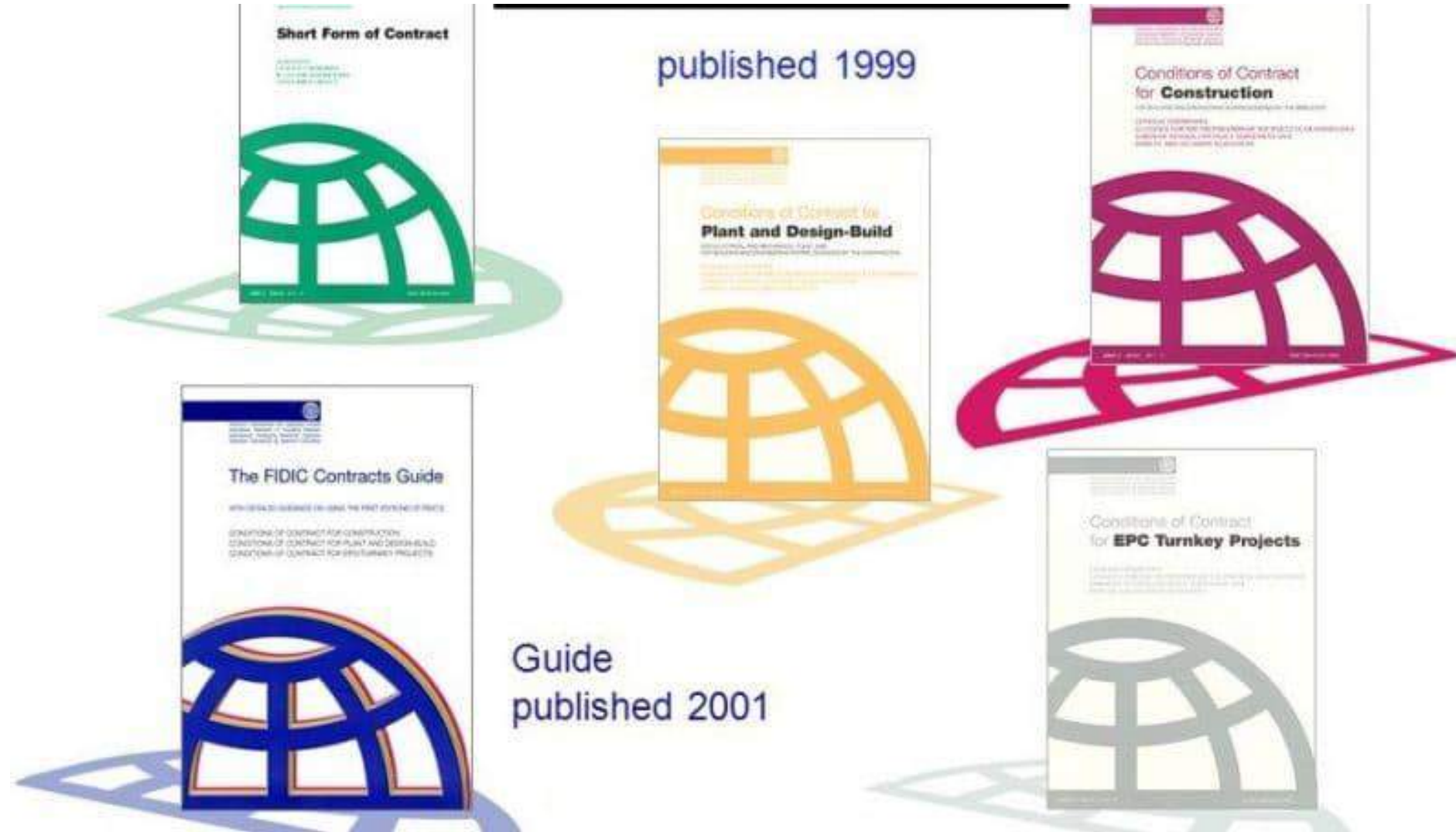


First Edition 1963

Second Edition 1980

Third Edition 1987

FIDIC's New Suite of Contracts



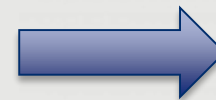
“Red Book” “Conditions Of Contract For Construction”



First Edition 1999



Second Edition 2017



“Yalow Book”

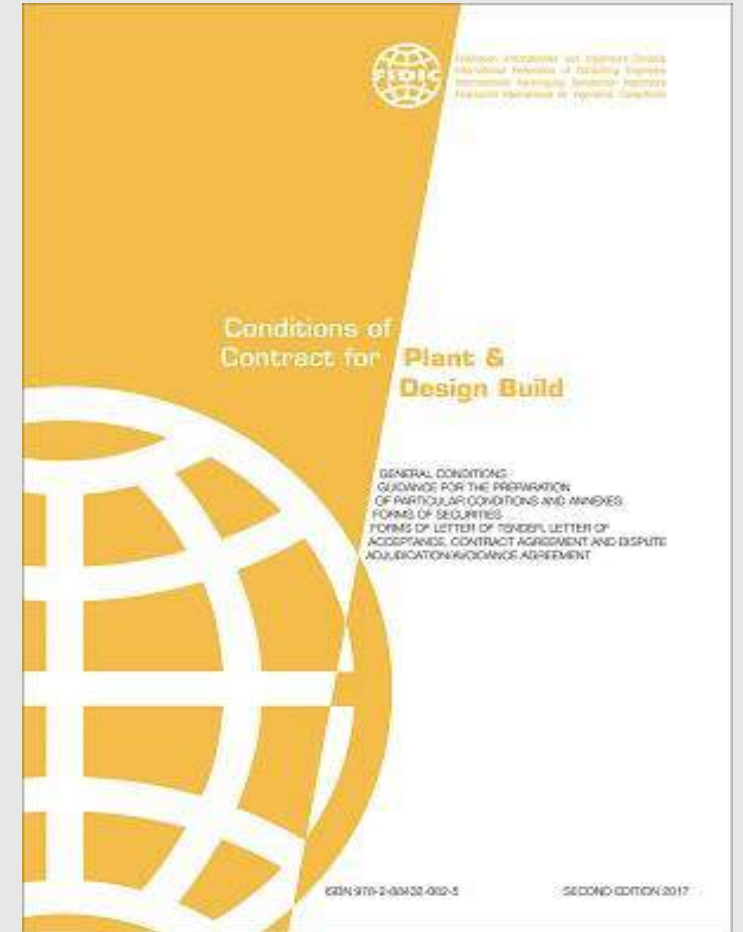
“Conditions Of Contract For Plant And Design-Build”



First Edition 1999

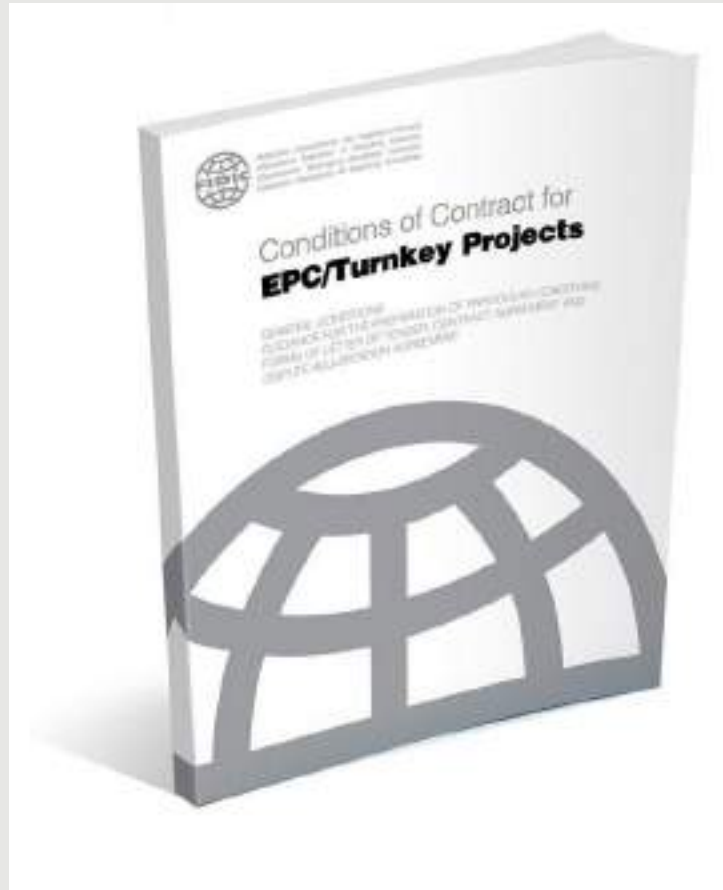


Second Edition 2017



“Silver Book”

“Conditions of Contract for EPC/Turnkey Projects”



First Edition 1999



Second Edition 2017





Conditions of Contract for Construction
General Conditions, Particular Conditions and Annexes
Forms of Agreement, Tender, Letter of Acceptance, Contract Agreement and Dispute Adjudication/Arbitration Agreement

Conditions of Contract for Construction

GENERAL CONDITIONS
GUIDANCE FOR THE PREPARATION
OF PARTICULAR CONDITIONS AND ANNEXES
FORMS OF AGREEMENT
FORMS OF LETTER OF TENDER, LETTER OF
ACCEPTANCE, CONTRACT AGREEMENT AND DISPUTE
ADJUDICATION/ARBITRATION AGREEMENT

ISBN 978 2 84598 284 8

SECOND EDITION 2017



Conditions of Contract for EPC/Turnkey Projects
General Conditions, Particular Conditions and Annexes
Forms of Agreement, Tender, Letter of Acceptance, Contract Agreement and Dispute Adjudication/Arbitration Agreement

Conditions of Contract for EPC/Turnkey Projects

GUIDANCE FOR THE PREPARATION
OF PARTICULAR CONDITIONS AND ANNEXES
FORMS OF AGREEMENT
FORMS OF LETTER OF TENDER, CONTRACT AGREEMENT
AND DISPUTE ADJUDICATION/ARBITRATION AGREEMENT

ISBN 978 2 84598 285 5

SECOND EDITION 2017



Conditions of Contract for Plant & Design Build
General Conditions, Particular Conditions and Annexes
Forms of Agreement, Tender, Letter of Acceptance, Contract Agreement and Dispute Adjudication/Arbitration Agreement

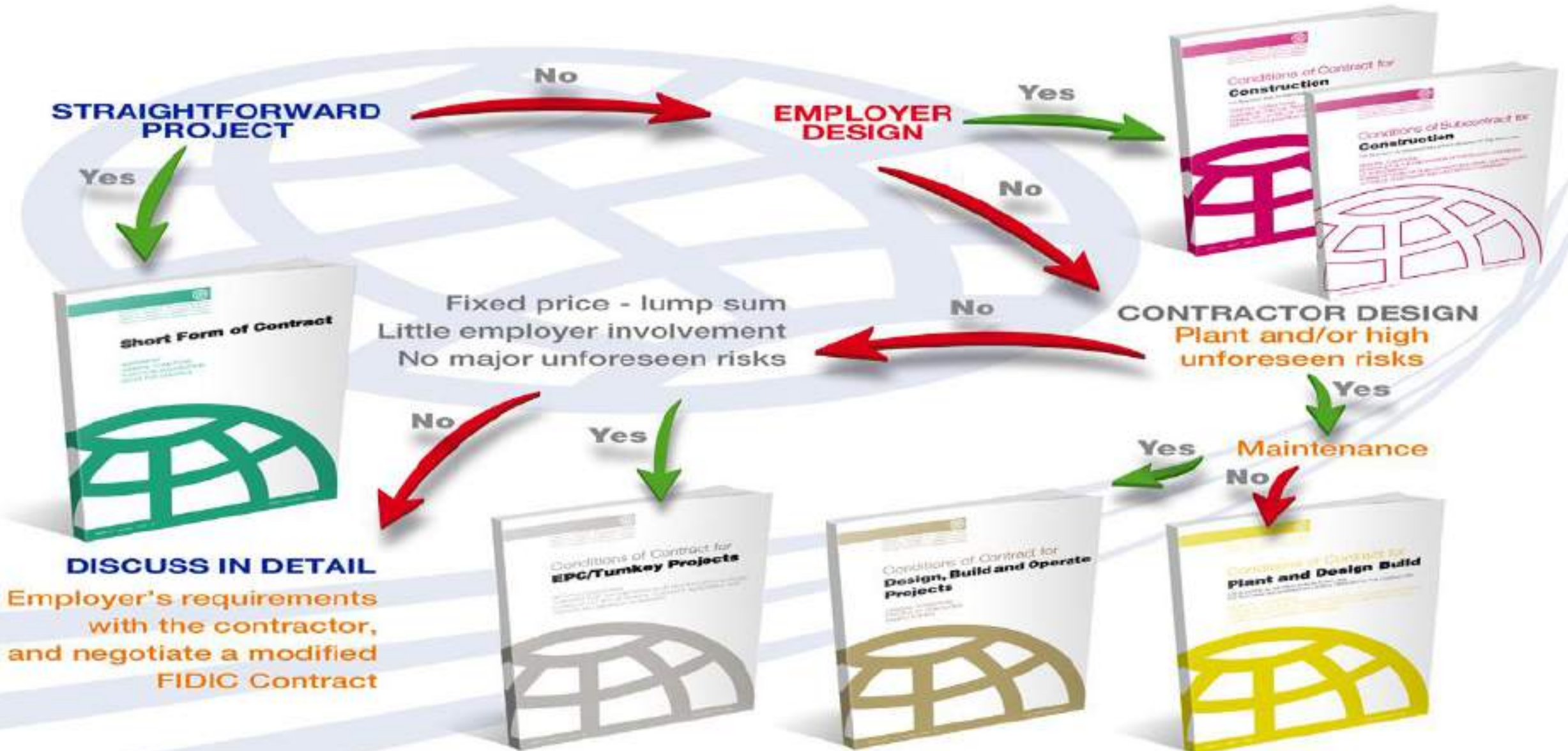
Conditions of Contract for Plant & Design Build

GENERAL CONDITIONS
GUIDANCE FOR THE PREPARATION
OF PARTICULAR CONDITIONS AND ANNEXES
FORMS OF AGREEMENT
FORMS OF LETTER OF TENDER, LETTER OF
ACCEPTANCE, CONTRACT AGREEMENT AND DISPUTE
ADJUDICATION/ARBITRATION AGREEMENT

ISBN 978 2 84598 286 2

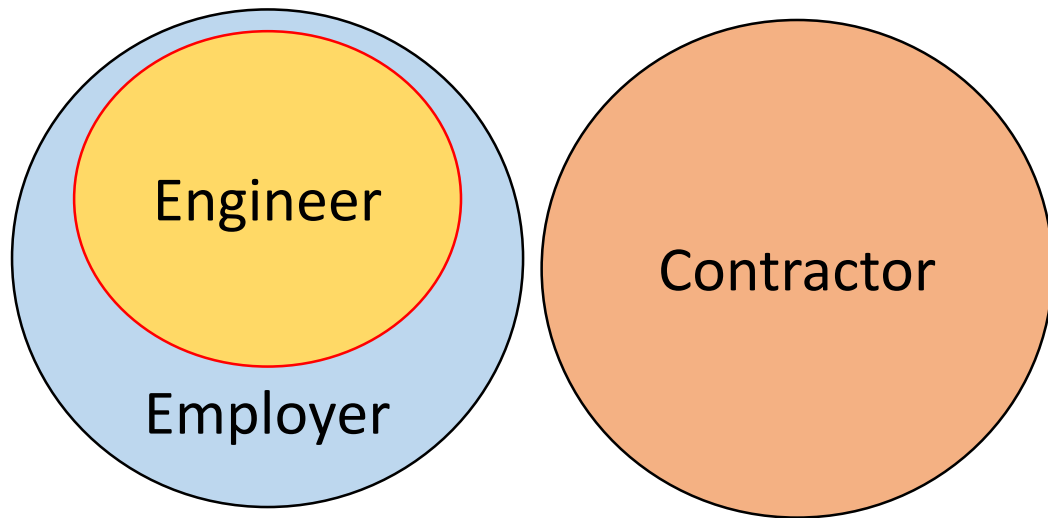
SECOND EDITION 2017

Which FIDIC Contract Should I Use

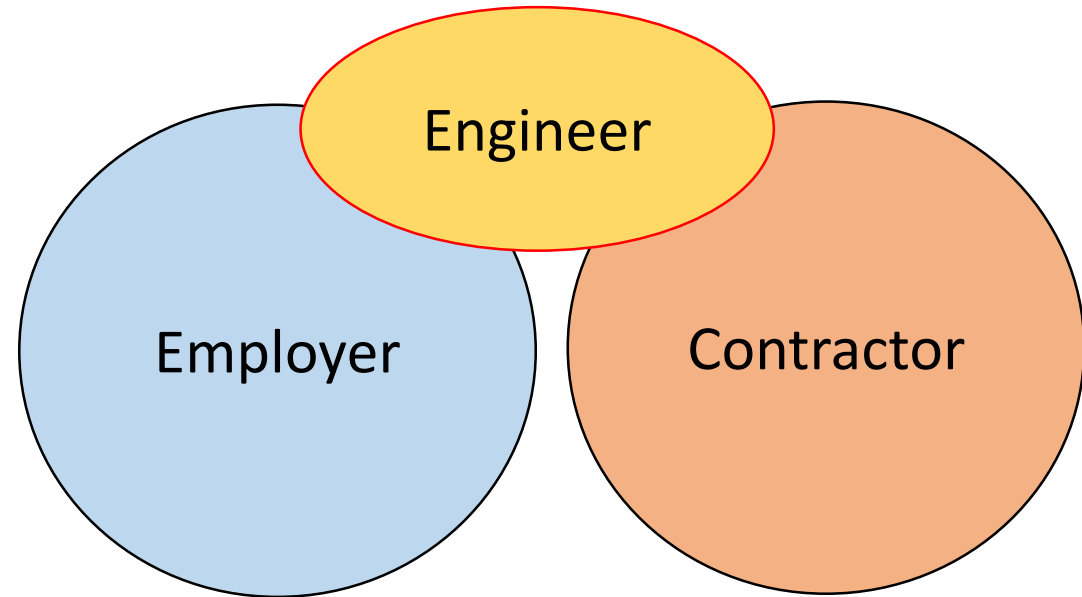


Engineer's Role in FIDIC Contract

1999 Contracts



≤ 1987 Contracts



Differences between 1999 Construction & 1987 Red (Engineer's Role , Clause No.3)

3.2: Engineer's Representative replaced by any number of assistants, who may include a resident engineer.

3.4: Employer now entitled to replace the Engineer.

3.1 and **3.5:** Engineer is deemed to act for the Contractor unless stated to the contrary, but if required to agree or determine a matter must consult with the parties in an attempt to reach agreement, and failing agreement, make a fair determination. (1992 **Red Book**, the Engineer was required to exercise his discretion under the contract impartially within the terms of the contract).

Differences between 1999 Construction & 1987 Red (Engineer's Role , Clause No.13)

13.2: Value Engineering introduced.

13.7: the Contractor's right to adjustment of the Contract Price to take account of any increase or decrease in cost (as defined) resulting from a change in law extended to include changes in the judicial or official governmental interpretation of laws made after the base date.

13.8: A formula for calculating adjustments for changes in Cost.

Differences between 1999 Construction & 1987 Red (Engineer's Role , Clause No.20)

20: In making a determination for a Contractor's claim for adverse unforeseen physical obstructions/conditions, the Engineer can review whether other physical conditions encountered were more favourable than could reasonably have been expected at the tender stage.

20.1: After receiving a claim or any further particulars supporting a previous claim, the Engineer required to "respond with approval, or with disapproval, and detailed comments.

“Consultancy Services Contract”

“White Book”

Client / Consultant

Model Services Agreement

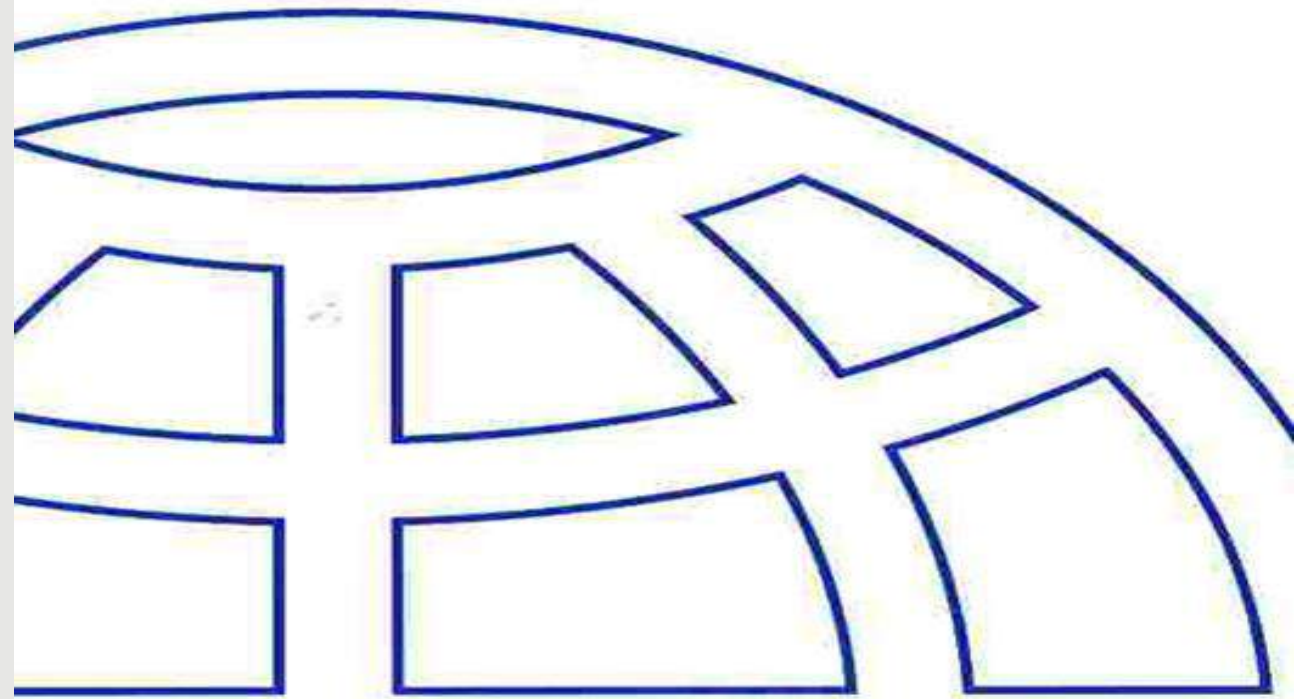
White Book

- First edition 1991
- Second edition 1996
- Third edition 1998
- Forth edition 2006
- Fifth edition 2017



Client/Consultant **Model Services Agreement**

AGREEMENT
GENERAL CONDITIONS
PARTICULAR CONDITIONS
APPENDICES A, B AND C



General Conditions of White Book (8 Clause)

1- Clause No. “1” : General Provisions.

2- Clause No. “2” :The Client.

3- Clause No. “3” :The Consultant.

4- Clause No. “4” : Commencement, Completion, Variation and Termination.

5- clause No. “5” : Payment

6- clause No. “6” : Liabilities

7- clause No. “7” : Insurance

8- clause No. “8” : Disputes and Arbitration

works contract and service agreement discrepancies

The main participants in a FIDIC contract are:

Employer Service agreement between Employer and Engineer (FIDIC White Book)

Engineer Engineer to administer works contract on behalf of Employer.

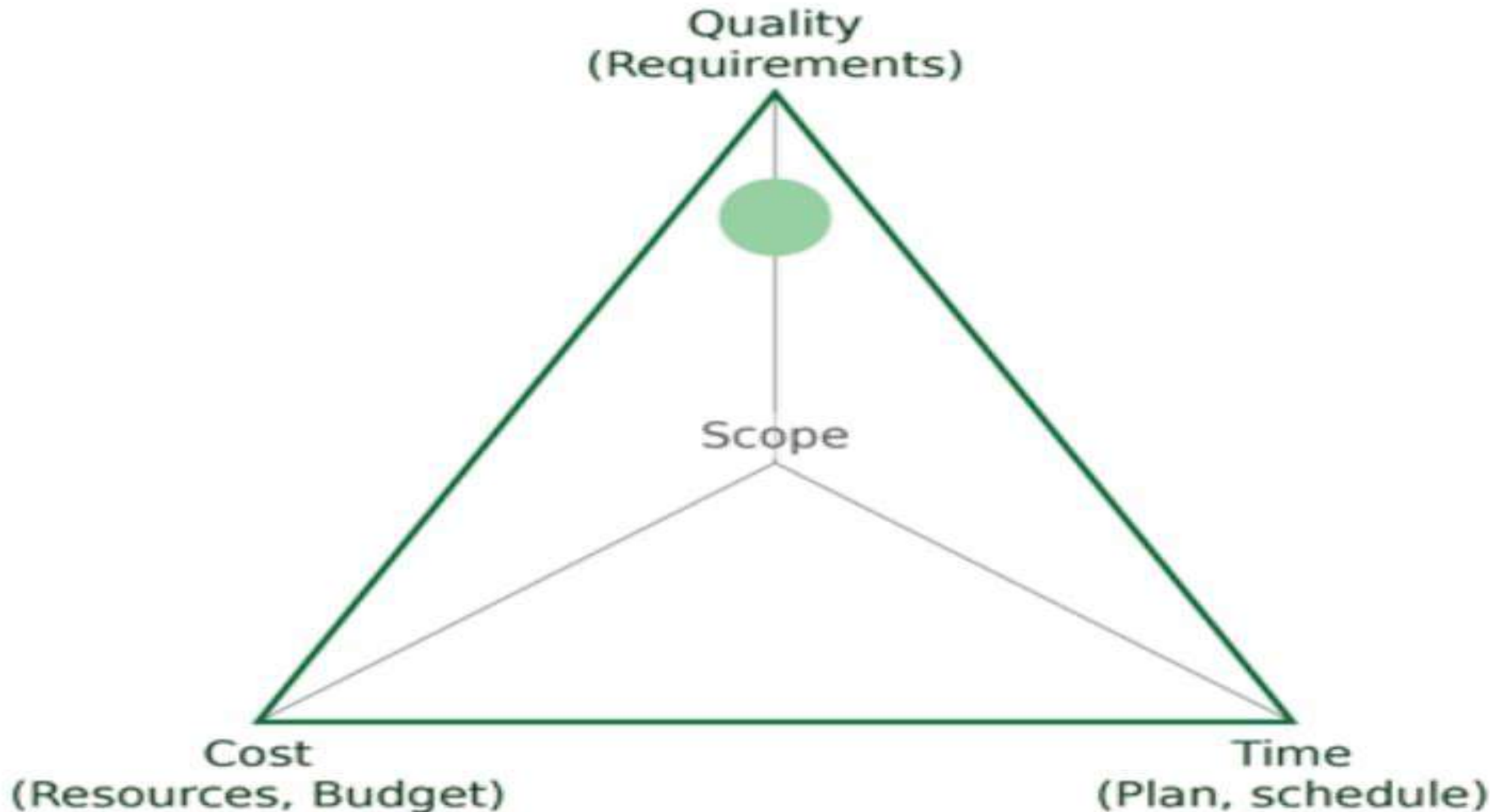
Contractor Contract agreement between Contractor and Employer

DAB Agreement between Employer / Contractor and 1 or 3 Members of DAB.

works contract and service agreement discrepancies

Engineer must:

- Review the works contract in regard to the Engineer's responsibilities and obligations to identify any contradictions with his service agreement.
- Recommend to the Employer that contradictions be removed (by amendment of the service agreement or by incorporation of limitations of the Engineer's authority).
- Inform the Employer in writing with recommendations as to how the contradictions could be resolved.



Characteristics of FIDIC Conditions of Contracts

ENGINEER

In the “New Red Book”, the Engineer’s role increased in solving the problems during the Contract.

The Engineer cannot be replaced with another Engineer against which the Contractor has reasonable objections.

The Engineer is part of the Employer’s personnel – not impartiality. He has to act fairly in making a determination (3.5).

In case of disputes – DAB



Characteristics of FIDIC Conditions of Contracts:

ENGINEER

In the Yellow Book the responsibilities of the Engineer remain the same as in the Red Book except the design of the Works.

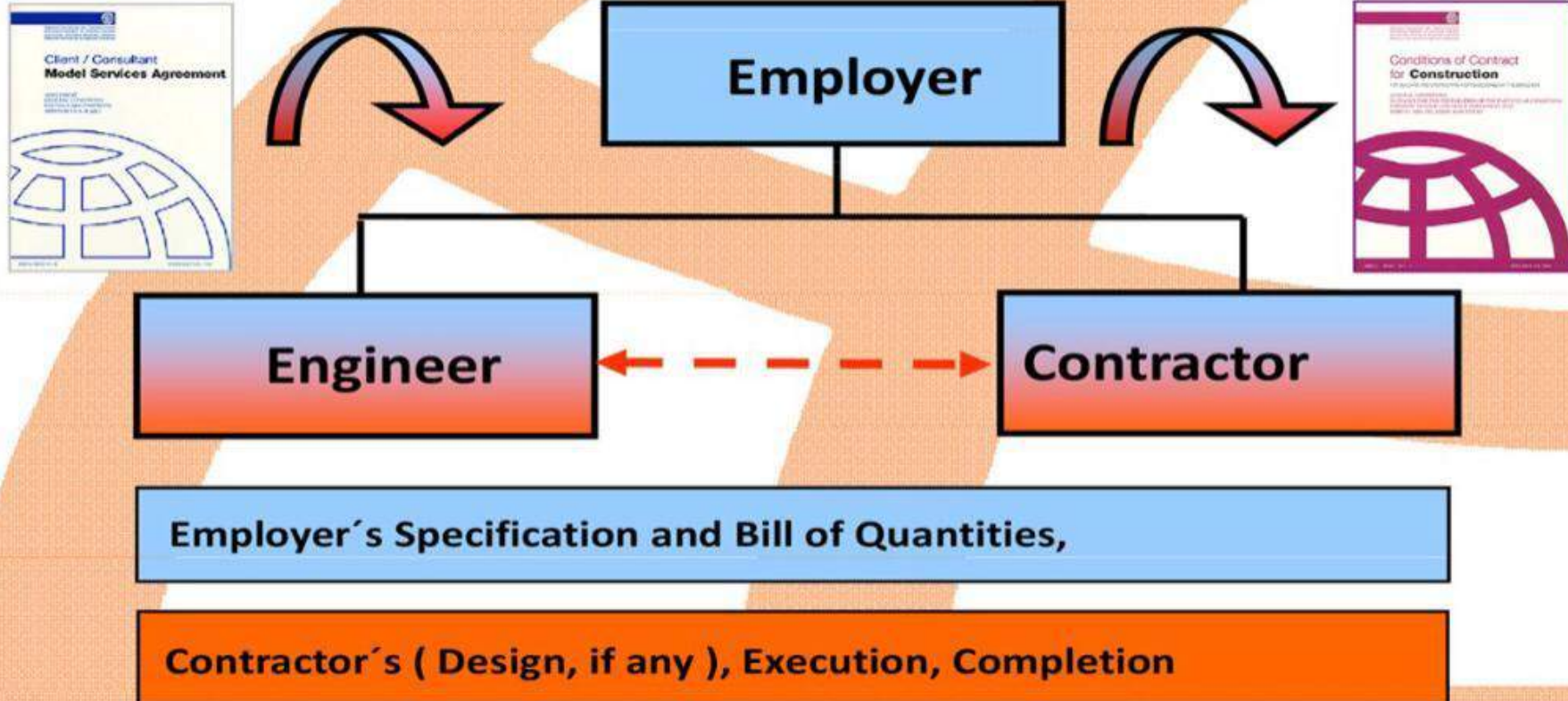
In the Yellow Book any approval of the design does not discharge the Contractor of his obligations and any errors of the design are the Contractor's responsibility.





FIDIC The Contract Management

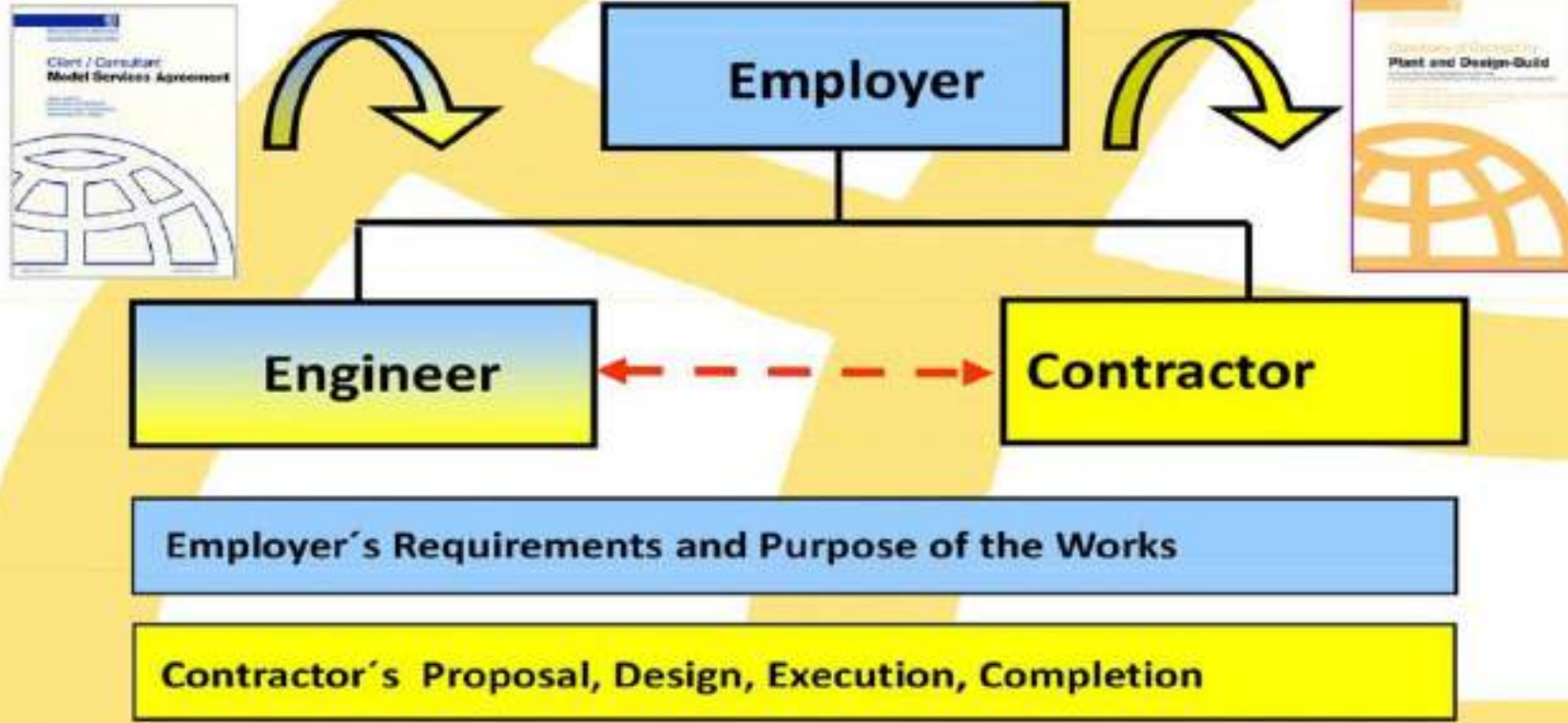
Organisation Diagram





FIDIC The Contract Management

Organisation Diagram



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.1 – The Engineer's Duties and Authority

- The Engineer has no authority to amend the Contract
- The Engineer is carrying out the duties assigned to him under the Contract
- The Engineer may be deemed to obtain the Employer's specific approval for some issues which have to be specified in Conditions of Particular Application

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



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.1 – The Engineer's Duties and Authority

→ The Engineer is deemed to act for the Employer

→ The Engineer has no authority to relieve either Party of any duties, obligations or responsibilities

→ Any approval, consent, certificate, notice of the Engineer shall not relieve the Contractor from any responsibility under the Contract.



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.2 – Delegation by the Engineer

- The Engineer may from time to time assign duties and delegate authority to assistants
- The Engineer may also revoke such assignment or delegation.
- Without the approval of the Parties he cannot delegate the authority to make a determination.



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.3 – Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract.

The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. .

Oral instruction should be confirmed in two days.





Confirmation of Verbal Instruction (CVI) in Construction





Instructing contractors to do additional work verbally is not uncommon in construction projects. However, contractors must have official instructions in order to claim the additional work. Hence, confirmation of verbal instruction (CVI) is commonly used by contractors.

To start, what is confirmation of verbal instruction (CVI)? **Confirmation of verbal instruction or CVI is a document submitted by contractors to consultants, architects or clients for re-confirmation of verbal instructions thereby allowing contractors to use it as a supporting document for variation order claims.**

CONFIRMATION OF VERBAL INSTRUCTION (CVI)

Project:		Project No:	
Contractor:		Date	
Location:		C.V.I. No.	

DETAILS OF VERBAL INSTRUCTIONS:

Subject:	
Consultant:	
Date:	
Location:	
Contractor's Representative:	Attachments:

This instruction is hereby confirmed in writing and unless contradicted in writing forthwith shall be deemed to be an order in writing by the Consultant pursuant to conditions of contract.

(Details of Instruction)

Signed by Consultant/Owner :		Date:	
------------------------------	--	-------	--

Response by the Engineer:	
(Details of the Engineer's Response)	

Signed by the Engineer:		Date:	
-------------------------	--	-------	--



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.4 – Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 42 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer..

The Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer, with supporting particulars.

Is it in the benefit of the project to do it?



RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

3.5 - Determinations

The Engineer is required to act fairly in making a determination.

There are 2 steps:

- A consultancy step in order to reach an agreement
- If the Parties cannot have an agreement the Engineer shall act fair and give a determination.

The determination shall be given to the Parties with supporting documents and justification

Each Party shall give effect to each agreement or determination unless and until revised by DAB



"Determinations"

Sub-Clause 3.5

- To determine any matter, the Engineer shall **consult with each Party in an endeavour to reach agreement**. If agreement is not achieved, the engineer shall **make a fair determination in accordance with the contract, taking due regard of all relevant circumstances**.

In general

- After receiving this notice, the Engineer shall proceed in accordance with sub clause 3.5 [Determinations] **to agree** or to determine these matters.

RESPONSIBILITIES OF THE MAIN PARTIES

3.The Engineer

Engineer's responsibilities

- The responsibilities mentioned in the Sub-clause 3.1
- Instruct the Contractor Sub-clause 3.3
- Notice to commence the Works Sub-clause 8.1
- Rate of progress Sub-clause 8.6
- Check the materials and the execution procedure
- To reject the Works which are not done in accordance with the specifications
- Measure the Works Sub-clause 12.1
- Variation order Sub-clause 13.1
- Payment Certificates Clause 14.
- Make determinations and assess the claims



FIDIC Contract gave the Engineer authority:

Evaluation

Determination

Certificate Issuance

Instructions

Decision