



Fédération Internationale des Ingénieurs-Conseils
International Federation of Consulting Engineers
Internationale Vereinigung Beratender Ingenieure
Federación Internacional de Ingenieros Consultores

Form of Contract

FOR DREDGING AND RECLAMATION WORKS

AGREEMENT
GENERAL CONDITIONS
RULES FOR ADJUDICATION
NOTES FOR GUIDANCE

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Form of Contract FOR DREDGING AND RECLAMATION WORKS

ISBN 2-88432-045-6
First Edition 2006

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

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ACKNOWLEDGEMENTS

The Fédération Internationale des Ingénieurs-Conseils (FIDIC) extends special thanks to the following members of its Task Group: Philip Jenkinson (Task Group Leader), WS Atkins, UK; Pieter Boer, IADC, The Netherlands; Constantijn Dolmans, IADC, The Netherlands; AEJ (Tony) Sanders, Mouchel, UK; and Edward Corbett, Corbett & Co, UK.

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International Navigation Association, PIANC, Belgium
The World Bank

Acknowledgement of reviewers does not mean that such persons or organisations approve the wording of all clauses.

FIDIC wishes to record its appreciation of the time and effort devoted by all the above.

The ultimate decision on the form and content of the document rests with FIDIC.

FOREWORD

These Conditions of Contract have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) in close collaboration with the International Association of Dredging Companies (IADC), and are recommended for dredging and reclamation work. The ultimate decision on the form and content of the document rests with FIDIC.

The aim has been to produce a straightforward document which includes all essential commercial provisions, and which may be used for all types of dredging and reclamation work and ancillary construction with a variety of administrative arrangements. Under the usual arrangements for this type of contract, the Contractor constructs the Works in accordance with design provided by the Employer or by his Engineer. However, this form may also be suitable for contracts that include, or wholly comprise, contractor-designed works. In addition, the Employer has a choice of valuation methods.

The form is recommended for general use, though modifications may be required in some jurisdictions. FIDIC considers the official and authentic text to be the version in the English language.

The intention is that all necessary information should be provided in the Appendix to the Agreement, the latter incorporating the tenderer's offer and its acceptance in one simple document. The General Conditions are expected to cover the majority of contracts. Nevertheless, users will be able to introduce Particular Conditions if they wish, to cater for special cases or circumstances. The General Conditions and the Particular Conditions will together comprise the Conditions governing the rights and obligations of the parties.

To assist in the preparation of tender documents using these Conditions, Notes for Guidance are included. These Notes will not become one of the documents forming the Contract. Finally, applicable Rules for Adjudication are also included.

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Agreement

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Agreement

The Employer is _____ of

The Contractor is _____ of

The Employer desires the execution of certain Works known as _____

OFFER

The Contractor has examined the documents listed in the Appendix which forms part of this Agreement and offers to execute the Works in conformity with the Contract for the sum of

_____ (in words)

_____ (in figures) _____)

or such other sum as may be ascertained under the Contract.

This offer, of which the Contractor has submitted two signed originals, may be accepted by the Employer by signing and returning one original of this document to the Contractor before

_____ (date)

The Contractor understands that the Employer is not bound to accept the lowest or any offer received for the Works.

Signature: _____ Date: _____

Name: _____ Authorised to sign on behalf of (organization name): _____

Capacity: _____

Witness: _____ Name: _____

ACCEPTANCE

The Employer has by signing below, accepted the Contractor's offer and agrees that in consideration for the execution of the Works by the Contractor, the Employer shall pay the Contractor in accordance with the Contract. This Agreement comes into effect on the date when the Contractor receives one original of this document signed by the Employer.

Signature: _____ Date: _____

Name: _____ Authorised to sign on behalf of (organization name): _____

Capacity: _____

Witness: _____ Name: _____

APPENDIX

This Appendix forms part of the Agreement.

[Note: with the exception of the items for which the Employer's requirements have been inserted, the Contractor shall complete the following information before submitting his offer.]

Item	Sub-Clause	Data
Documents forming the Contract listed in the order of priority	1.1.1 & 1.3	
Document (delete if not applicable)		Document Identification
(a) The Agreement		_____
(b) Particular Conditions		_____
(c) General Conditions		_____
(d) The Specification		_____
(e) The Drawings		_____
(f) The Contractor's tendered design		_____
(g) The bill of quantities		_____
(h)		_____
(i)		_____
Name and address of Engineer (if known)	1.1.6	_____
Time for Completion for the Works	1.1.10 . . .	_____ days (for Section completions - see end of Appendix)
Law of the Contract	1.4	Law of the Country* _____
Language	1.5	English* _____
Methods of communication	1.5	By hand, by fax, by post* _____
Addresses for communication	1.5	Employer: as stated in Agreement* _____
		Contractor: _____
		Engineer: as stated in 1.1.6* _____

* Employer to amend as appropriate

Item	Sub-Clause	Data
Notices, fees and other charges to be given or paid by the Employer	1.6	_____
Provision of Site	2.1	On the Commencement Date _____
Permits, licences and approvals to be obtained and paid for by the Employer	2.2	_____
Employers' authorised person ..	2.4	_____
Limits on Engineer's authority ...	3.1 & 10.1	_____ (details)
Performance security (if any)		
Amount	4.4	_____
Form	4.4	_____ (details)
Requirements for Contractor's design (if any)	5.1	Specification Clauses _____
Adverse climatic conditions	6.1 (m) ...	Specification Clauses _____ (details)
Programme		
Time for submission	7.2	Within 14 days * of the Commencement Date
Form of programme	7.2	_____
Amount payable due to failure to complete the Works	7.4	_____ per day or part of a day up to a maximum of 10%* of sum stated in the Agreement (for Section completions - see end of Appendix)
Period for notifying defects		
dredging works	9.2 & 11.5	Not applicable
other works	9.1 & 11.6	365 days*calculated from the date stated in a Taking-Over Certificate
Extent of dredging works	9.2 & 11.5	_____ (details)

* Employer to amend as appropriate

Item	Sub-Clause	Data
Variation procedure		
Daywork rates	10.2	_____ (details)
Valuation of the Works*		
Lump sum price	11.1	_____ (details)
Lump sum price with schedules of rates	11.1	_____ (details)
Lump sum price with bill of quantities	11.1	_____ (details)
Remeasurement with bill of quantities	11.1	_____ (details)
Cost plus	11.1	_____ (details)
Advance Payment		
Amount	11.2	_____
Repayment terms	11.2	_____ amount per month for _____ months
Percentage of value of Materials and Plant	11.3	Materials _____ 80%* Plant _____ 90%*
Percentage of retention	11.4	_____ 5%*
Currency of payment	11.8	_____
Financing charges	11.9	_____ 3 percentage points added to the discount rate of the central bank in the country of the currency of payment*

*Employer to amend as appropriate

Item	Sub-Clause	Data
Limits of Contractor's liability	13.3	

Type	Limit
Damage to the Works	The figure stated in the Agreement
Damage to Employer's property other than the Works	Amount of relevant insurance required under Sub-Clause 14.1
Death or injury to Employer's or Engineer's personnel	Amount of relevant insurance required under Sub-Clause 14.1
Indemnity to Employer in respect of Third Party claims for damage to property or for death or injury	No limit
Consequential losses arising from:	
(a) Defects	(a) 50% of the figure stated in the Agreement*
(b) Damage to the Works	(b) 50% of the figure stated in the Agreement*
(c) Damage to Employer's other property	(c) Amount of relevant insurance required under Sub-Clause 14.1*
(d) Any other cause	(d) 50% of the figure stated in the Agreement*

**Employer to amend as appropriate*

Item	Sub-Clause	Data
Insurance	14.1	

Type	Minimum amount *	Name(s) of Insured*	Period*	Exclusions*
Hull and machinery	Full replacement costs and liability for each and every incident	Contractor	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	
The Works, Contractor's Equipment, Materials, Plant and fees	The figure stated in the Agreement plus 15% for each and every incident	Contractor and Employer	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Dredging works _____
Damage to Employer's property other than the Works	For each and every incident sum	Contractor and Employer	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Not applicable
Death or injury to Employer, Engineer or their personnel	For each and every incident sum	Contractor and Employer	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Not applicable

*Employer to amend as appropriate

Type	Minimum amount *	Name(s) of Insured*	Period*	Exclusions*
Third Party death or injury to persons and damage to property	For each and every incident sum _____	Contractor and Employer	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Not applicable
Contractor's personnel, subcontractors and other employees	For each and every incident sum _____	Contractor and Employer	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Not applicable
Professional Indemnity for Contractor's design*	For each and every incident sum _____	Contractor	From the Commencement Date until the date of issue of the Taking-Over Certificate and completion of remedying defects* _____	Not applicable
Other cover*	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*Employer to amend as appropriate

Item	Sub-Clause	Data
Adjudication		
Number of members	15.1	One* _____
Appointing authority	15.1	President of FIDIC or his nominee* _____ _____ (details)
If there are Sections		
Definition of Sections:		
Description (Sub-Clause 1.1.19)	Time for Completion (Sub-Clause 7.1)	Amount payable due to failure to complete (Sub-Clause 7.4)
_____	_____ days	_____ per day
_____	_____ days	_____ per day
_____	_____ days	_____ per day
_____	_____ days	_____ per day
_____	_____ days	_____ per day
_____	_____ days	_____ per day

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General Conditions

1 General Provisions

1.1

Definitions

In the Contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except where the context requires otherwise:

The Contract

- 1.1.1 “**Contract**” means the Agreement and the other documents listed in the Appendix.
- 1.1.2 “**Specification**” means the document as listed in the Appendix, including Employer’s requirements in respect of design to be carried out by the Contractor, if any, and any Variation to such document.
- 1.1.3 “**Drawings**” means the Employer’s drawings of the Works as listed in the Appendix, and any Variation to such drawings.

Persons

- 1.1.4 “**Employer**” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Contractor) any assignee.
- 1.1.5 “**Contractor**” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Employer) any assignee.
- 1.1.6 “**Engineer**” means the person named in the Appendix, or other person appointed from time to time by the Employer and notified to the Contractor.
- 1.1.7 “**Party**” means either the Employer or the Contractor.

Dates, Times and Periods

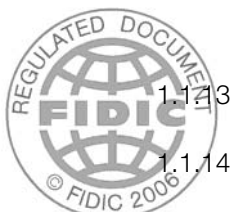
- 1.1.8 “**Commencement Date**” means the date 28 days after the date the Agreement comes into effect or any other date agreed between the Parties.
- 1.1.9 “**day**” means a calendar day.
- 1.1.10 “**Time for Completion**” means the time for completing the Works or Section as stated in the Appendix (or as extended under Sub-Clause 7.3), calculated from the Commencement Date.

Money and Payments

- 1.1.11 “**Cost**” means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

Other Definitions

- 1.1.12 “**Contractor’s Equipment**” means all apparatus, machinery, vehicles, vessels, facilities and other things required for the execution of the Works but does not include Materials or Plant.
- 1.1.13 “**Country**” means the country in which the Site is located.
- 1.1.14 “**DAB**” means the dispute adjudication board referred to in Clause 15.



- 1.1.15 “**Defined Risks**” means those matters listed in Sub-Clause 6.1.
- 1.1.16 “**Force Majeure**” means an exceptional event or circumstance which is beyond a Party’s control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
- 1.1.17 “**Materials**” means things of all kinds (other than Plant) intended to form or forming part of the permanent work.
- 1.1.18 “**Plant**” means the machinery and apparatus intended to form or forming part of the permanent work.
- 1.1.19 “**Section**” means a part of the Works specified in the Appendix as a Section (if any).
- 1.1.20 “**Site**” means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.
- 1.1.21 “**Taking-Over Certificate**” means a certificate issued by the Engineer under Sub-Clauses 8.2 or 8.3.
- 1.1.22 “**Variation**” means a change to the Specification and /or Drawings (if any) which is instructed by the Engineer under Sub-Clause 10.1.
- 1.1.23 “**Works**” means all the work and design (if any) to be performed by the Contractor including temporary work and any Variation.

1.2

Interpretation

Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.

1.3

Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory. If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary instructions to the Contractor, and the priority of the documents shall be in accordance with the order as listed in the Appendix.

1.4

Law

The law of the Contract is stated in the Appendix.

1.5

Communications

Wherever provision is made for the giving or issue of any notice, instruction, consent, determination, certificate or other communication by any person, these communications shall be in writing and shall not be unreasonably withheld or delayed. All written communications shall be in the language stated in the Appendix and shall be sent by one of the methods and to the addresses stated in the Appendix.

1.6

Statutory Obligations

The Contractor shall comply with the laws of the countries where activities are performed. The Contractor shall give all notices and pay all fees and other charges in respect of the execution of the Works, except for those stated in the Appendix.

2 The Employer

2.1

Provision of Site

The Employer shall provide the Site and right of access thereto at the times stated in the Appendix.

2.2

Permits and Licences

The Employer shall obtain those permits, licences or approvals in respect of any planning, zoning or other similar permission required for the Works to proceed, as stated in the Appendix. The Contractor shall obtain all other permits, licences and approvals required for the Works, with the reasonable assistance of the Engineer.

2.3

Site Data

The Employer shall have made available to the Contractor for his information prior to tendering, all data in the Employer's possession relevant to the execution of the Works, including hydrological, sub-water surface and sub-bottom conditions, and environmental aspects. The Contractor shall be responsible for interpreting all such data, and for inspecting the Site and making his own enquiries so far as is practicable (taking account of cost and time) before submitting his tender.

2.4

Employer's Authorised Person

The Employer shall appoint one of his personnel who shall have authority to act for him. This authorised person shall be as stated in the Appendix, or as otherwise notified by the Employer to the Contractor.

3 The Engineer

3.1

The Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. If the Engineer is required to obtain any approval from the Employer prior to carrying out any such duties, those requirements shall be as stated in the Appendix. The Contractor is entitled to assume that any required approval has been obtained. The Engineer may assign specific duties and authority to assistants, and may also revoke such assignment. The assignment or revocation will take effect when notified to the Parties.

The Engineer and any assistants shall exercise their duties and authority in a fair manner and in accordance with the Contract. The Engineer and any assistants shall have full access to the Site and the Works at all times for this purpose. The Engineer has no authority to relieve the Parties of any responsibilities under the Contract.

3.2

Instructions

The Contractor shall comply with all instructions given by the Engineer in respect of the Works including the suspension of all or part of the Works.

3.3

Approvals

No approval or consent or absence of comment by the Employer or the Engineer shall affect the Contractor's obligations.

4 The Contractor

4.1

General Obligations

The Contractor shall carry out the Works properly and in accordance with the Contract. The Contractor shall provide all supervision, labour, Materials, Plant and Contractor's Equipment that may be required. The Contractor shall be responsible for the adequacy, stability and safety of all operations and of all methods of construction. All Materials and Plant on Site shall, to the extent consistent with the laws of the Country, become the property of the Employer on delivery to the Site.

4.2

Contractor's Representative

The Contractor shall submit to the Engineer for consent the name and particulars of the person authorised to receive instructions on behalf of the Contractor.

4.3

Subcontracting

The Contractor shall not subcontract the whole of the Works. The Contractor shall not subcontract any part of the Works without the consent of the Engineer.

4.4

Performance Security

If stated in the Appendix, the Contractor shall deliver to the Employer within 28 days after the date the Agreement comes into effect, a performance security in a form and from a third party approved by the Employer. The Employer shall return the performance security to the Contractor within 21 days of the Employer taking over the whole of the Works under Clause 8.

5 Design by Contractor

5.1

Contractor's Design

The Contractor shall carry out design to the extent specified, as stated in the Appendix. The Contractor shall promptly submit to the Engineer all designs prepared by him. Within 21 days of receipt the Engineer may notify any comments or, if the design submitted is not in accordance with the Contract, may reject it stating the reasons. The Contractor shall not construct any element of the permanent work designed by him before the expiry of 21 days from the receipt of the design by the Engineer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. When the Engineer has notified comments, the Contractor may proceed with that element of the Works but shall resubmit the design and shall take these comments into account as necessary.

5.2

Responsibility for Design

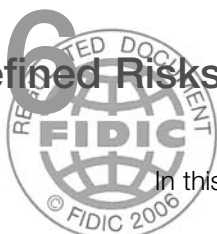
The Contractor shall be responsible for his tendered design and design under this Clause, both of which shall be fit for the intended purposes to be inferred from the Contract. The Contractor shall not infringe any intellectual property rights in respect of his design. The Employer shall be responsible for the Specification and Drawings.

6 Defined Risks

6.1

Defined Risks

In this Contract, Defined Risks mean:



- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, affecting the Works,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, affecting the Works,
- c) riot, commotion or disorder by persons other than the Contractor's and his subcontractors' personnel, affecting the Site and/or the Works,
- d) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material,
- e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- f) use or occupation by the Employer of any part of the Works, except as may be specified in the Contract,
- g) design of any part of the Works by the Employer, the Engineer or others for whom the Employer is responsible,
- h) any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions,
- i) Force Majeure,
- j) a suspension under Sub-Clause 3.2 unless it is attributable to any failure of the Contractor,
- k) any failure of the Employer or the Engineer,
- l) physical obstructions or physical conditions encountered on the Site during the performance of the Works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the Contractor immediately notified to the Engineer,
- m) climatic conditions more adverse than those specified in the Appendix,
- n) any delay or disruption caused by any Variation,
- o) any change to the law of the Contract after the date 28 days prior to the latest date for the submission of tenders,
- p) losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through the Site, and to occupy the Site for the permanent work, and
- q) damage which is an unavoidable result of the Contractor's obligations to execute the Works.

Time for Completion

7.1

Execution of the Works

The Contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works and Sections (if any) within the Time for Completion.

7.2

Programme

The Contractor shall submit to the Engineer a programme for the Works within the time and in the form stated in the Appendix. The Contractor shall submit revised programmes to the Engineer whenever reasonably required to do so by the Engineer.

7.3

Extension of Time

The Contractor shall be entitled to an extension to the Time for Completion if he is or will be delayed in completing the Works or any Section by any of the Defined Risks,

subject to any agreement under Sub-Clause 10.1 and subject to the provisions under Sub-Clause 10.3.

On receipt of an application from the Contractor, the Engineer shall consider all supporting details provided by the Contractor, consult the Parties, and extend the Time for Completion as appropriate.

7.4

Late Completion

If the Contractor fails to complete the Works or any Section within the Time for Completion, the Contractor's only liability to the Employer for such failure shall be to pay the amount stated in the Appendix for each day or part of a day for which he fails to complete the Works or Section.

After the issue of a Taking-Over Certificate under Sub-Clause 8.3, the amount stated in the Appendix for each day shall be reduced in the proportion that the value of the taken over work bears to the total value of the Works or Section.

Taking-Over

8.1

Completion

The Contractor shall notify the Engineer not earlier than 14 days before the date he considers that the Works or any Section will be complete.

8.2

Taking-Over Certificate

The Engineer shall, within 21 days after receiving the Contractor's notice, either issue a Taking-Over Certificate to the Parties, stating the date on which the Works or Section were completed, or reject the Contractor's notice stating his reasons. Alternatively, the Engineer may issue a Taking-Over Certificate to the Parties stating that the Works or Section, although not fully complete, are ready for taking over, stating the date and outstanding work accordingly.

The Employer shall take over the Works or Section upon the issue of a Taking-Over Certificate. The Contractor shall promptly complete any outstanding work and, subject to Clause 9, clear the Site or Section.

8.3

Taking-Over Part of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any completed part of the Works.

Except as specified or as agreed between the Parties, the Employer shall not occupy or use any part of the Works prior to the issue of a Taking-Over Certificate for that part of the Works.

Remedying Defects

9.1

Remedying Defects

The Engineer may at any time prior to the expiry of the period or periods stated in the Appendix, notify the Contractor of any defects or outstanding work, stating a reasonable period within which the remedial or outstanding work is to be completed. Subject to Clause 9.2, the Contractor shall remedy at no cost to the Employer any defects due to the Contractor's design, Materials, Plant or workmanship not being in accordance with the Contract.

The cost of remedying defects attributable to any other cause shall be valued as a Variation. Failure to remedy any defects or complete outstanding work within the notified period shall entitle the Employer to carry out all necessary work at the Contractor's cost.

9.2

Dredging Works

The Contractor shall have no obligation to remedy defects in the dredging works defined in the Appendix notified after the date on which the Works or Section were completed as stated in the Taking-Over Certificate.

9.3

Uncovering and Testing

The Engineer may instruct the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's design, Materials, Plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2.

10 Variations and Claims

10.1

Right to Vary

The Engineer may instruct Variations, and reach agreement on behalf of the Employer under this Sub-Clause and under Sub-Clauses 10.2 and 10.5, subject to any limits stated in the Appendix. The Engineer shall not instruct the omission of work for the purpose of the work being carried out by the Employer or another contractor.

Prior to instructing any Variation, the Engineer may require the Contractor to submit his quotation for carrying out the proposed varied work, including the time and cost effects. The Engineer may then instruct the Variation stating whether or not the time and cost effects quoted by the Contractor are agreed.

If the Engineer gives an instruction which will require either the mobilisation of major dredging equipment additional to that which is intended for use on the Works, or the early mobilisation of such intended equipment, the Contractor shall notify the Engineer immediately. The Contractor shall be under no obligation to comply with this instruction until the time and cost effects have been agreed between the Engineer and the Contractor.

The Contractor's entitlement to extension to the Time for Completion and additional payment under any such Variation shall be determined by any agreement under this Sub-Clause.

10.2

Valuation of Variations

Variations shall be valued as follows:

- a) at an agreed lump sum price, or
- b) where appropriate, at rates in the Contract, or
- c) in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation, or failing which
- d) at appropriate new rates, as may be agreed or which the Engineer considers appropriate, or
- e) if the Engineer so instructs, at daywork rates set out in the Appendix for which the Contractor shall keep records of hours of labour and Contractor's Equipment, and of Materials used.



10.3 Early Warning

A Party shall notify the other Party and the Engineer as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment. The Parties shall take all reasonable steps to minimise these effects.

The Contractor's entitlement to extension to the Time for Completion or additional payment shall be limited to the time and payment which would have been due if he had given prompt notice and had taken all reasonable steps.

10.4

Contractor's Right to Claim

If the Contractor incurs Cost as a result of any of the Defined Risks, the Contractor shall be entitled to the amount of such Cost, subject to any more specific provision in the Contract. If as a result of the Defined Risks, it is necessary to change the Works, this shall be dealt with as a Variation.

10.5

Variation and Contractor's Claim Procedure

The Contractor shall submit to the Engineer an itemised make-up of Variations and claims including time and cost effects within 28 days of the instruction or of the event giving rise to the claim or such other reasonable time as may be agreed by the Engineer. The Engineer shall check the Contractor's submission, consult the Parties, and if possible agree the time and cost effects. In the absence of agreement, the Engineer shall make a determination.

10.6

Employer's Claim

If the Employer considers himself entitled to any payment or deduction in connection with the Contract, he shall submit particulars to the Contractor and the Engineer.

The Engineer shall check the Employer's submission, consult the Parties, and if possible agree the amount of the Employer's entitlement. In the absence of agreement, the Engineer shall make a determination, stating his reasons, and shall certify such amount as a deduction under Sub-Clause 11.4. The Employer shall not make any other set-off or deduction.

11 Contract Price and Payment

11.1

Valuation of the Works

The Works shall be valued as stated in the Appendix, subject to Clause 10.

11.2

Advance Payment

The Engineer shall certify and the Employer shall make an advance payment to the Contractor of the amount stated in the Appendix when:

- a) the Agreement has come into effect, and
- b) the Contractor has provided the Employer with a security for the full amount of the advance payment in a form and from a third party approved by the Employer.

The Employer shall pay within 28 days of delivery of the Contractor's application for payment to the Engineer.

The advance payment shall be repaid by the Contractor by making a deduction from the net amount due under each interim payment certificate, as stated in the Appendix.

11.3

Monthly Statements

The Contractor shall be entitled to be paid at monthly intervals:



- a) the value of the Works executed,
- b) the percentage stated in the Appendix of the value of Materials and Plant delivered to the Site at a reasonable time,

subject to any additions or deductions which may be due under the Contract or otherwise.

The Contractor shall submit each month to the Engineer a statement showing the amounts to which he considers himself entitled.

11.4

Interim Payments

The Engineer shall certify the amount shown in the Contractor's statement, less retention at the rate stated in the Appendix, less any amount for which the Engineer has specified his reasons for disagreement, and less any deduction notified by the Engineer under Sub-Clause 10.6. The Engineer may correct any sum previously certified.

The Employer shall pay to the Contractor the amount certified. The Engineer shall certify and the Employer shall pay within 28 days of delivery of the Contractor's statement to the Engineer. A copy of the Engineer's certificate shall be sent to the Contractor.

The Employer may withhold interim payments until he receives the performance security under Sub-Clause 4.4 (if any) and the evidence of insurance under Sub-Clause 14.1.

11.5

Payment of Retention - Dredging Works

In respect of dredging works defined in the Appendix, the relevant proportion of the retention shall be included in the next monthly statement after the issue of a Taking-Over Certificate. If a Taking-Over Certificate is issued prior to the Works or Section being fully complete, all or part of the retention may be withheld by the Engineer, until the outstanding work has been completed.

11.6

Payment of Retention - Other Works

In respect of works other than dredging works, one half of the relevant proportion of the retention shall be included in the next monthly statement after the issue of a Taking-Over Certificate. The remainder of the relevant proportion of the retention shall be included in the next monthly statement after either the expiry of the period or periods stated in the Appendix, or the remedying of notified defects, or the completion of outstanding work, all as referred to in Sub-Clause 9.1, whichever is the later.

11.7

Final Payment

Within 42 days of the latest of the events listed in Sub-Clause 11.5 or 11.6 as appropriate, the Contractor shall submit a final account to the Engineer together with any documentation reasonably required to enable the Engineer to ascertain the final contract value.

Within 28 days after the submission of this final account and any further documentation reasonably required, the Engineer shall certify and the Employer shall pay to the Contractor any amount due. If the Engineer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when certifying payment.

11.8

Currency

Payment shall be in the currency stated in the Appendix.

11.9

Delayed Payment

The Contractor shall be entitled to financing charges compounded monthly at the rate stated in the Appendix for each day the Employer fails to pay beyond the prescribed payment period.

12

Default

12.1

Default by Contractor

If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Engineer or fails to proceed expeditiously and without delay, or is, despite a written complaint, in breach of the Contract, the Employer may give notice referring to this Sub-Clause and stating the default.

If the Contractor does not take all practicable steps to remedy the default, the following procedure shall apply. 14 days after the Contractor's receipt of the Employer's notice, the Employer may by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilise from the Site leaving behind Materials and Plant and any Contractor's Equipment which the Employer instructs in the second notice is to be used until the completion of the Works.

12.2

Default by Employer

If the Engineer fails to certify or the Employer fails to pay in accordance with Sub-Clause 11.4, or the Employer is, despite a written complaint, in breach of the Contract, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within 7 days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or part of the Works.

If the default is not remedied the following procedure shall apply. 14 days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further 21 days, terminate the Contract. The Contractor shall then demobilise from the Site.

12.3

Insolvency

If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately. The Contractor shall then demobilise from the Site leaving behind, in the case of the Contractor's insolvency, any Contractor's Equipment which the Employer instructs in the notice is to be used until the completion of the Works.

12.4

Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- b) any sums to which the Employer is entitled in connection with the Contract,
- c) if the Employer has terminated under Sub-Clause 12.1 or 12.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination,
- d) if the Contractor has terminated under Sub-Clause 12.2 or 12.3, the Contractor shall be entitled to the Cost of his suspension and demobilisation together with a sum equivalent to 10% of the value of those parts of the Works not executed at the date of termination.

The net balance due shall be certified by the Engineer and shall be paid or repaid within 70 days of the notice of termination.



13

Risk and Responsibility

13.1

Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of issue of the Taking-Over Certificate for the Works, any Section or part. Responsibility for the Works, any Section or part taken over shall then pass to the Employer. If any loss or damage happens to the Works prior to the date of issue of the relevant Taking-Over Certificate, the Contractor shall rectify such loss or damage so that the Works conform with the Contract.

13.2

Contractor's Indemnities

Unless the loss or damage happens as a result of a Defined Risk, the Contractor shall indemnify the Employer, the Employer's contractors, agents and employees against all loss or damage happening to the Works and against all claims or expense caused by a breach of the Contract, by negligence or by other default of the Contractor, his agents or employees.

13.3

Limit of Contractor's Liability

The maximum liability of the Contractor to the Employer shall be limited as stated in the Appendix.

13.4

Force Majeure

If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately with a copy to the Engineer. If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Engineer, demobilise the Contractor's Equipment.

If the event continues for a period of 84 days, either Party may then give notice of termination that shall take effect 28 days after the giving of the notice.

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- b) the Cost of his suspension and demobilisation, and
- c) any sums to which the Employer is entitled in connection with the Contract.

The net balance due shall be certified by the Engineer and shall be paid or repaid within 70 days of the notice of termination.

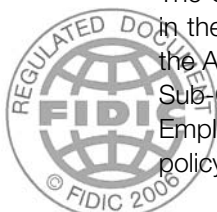
14

Insurance

14.1

Arrangements

The Contractor shall, prior to commencing the Works, effect insurances of the types, in the amounts, for the periods, and naming as insured the persons, all as stated in the Appendix except for items (a) to (g) and (i) to (q) of the Defined Risks as set out in Sub-Clause 6.1. The policies shall be issued by insurers and in terms approved by the Employer. The Contractor shall provide the Employer with evidence that any required policy is in force and that the premiums have been paid.



14.2
Failure to Insure

If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clause, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

15 Resolution of Disputes

15.1
Adjudication

Unless settled amicably, any dispute or difference between the Contractor and the Employer which arises out of or in connection with the Contract, including any opinion, instruction, determination, certificate or valuation or other decision of the Engineer, shall be referred by either Party to adjudication by a DAB in accordance with the attached Rules for Adjudication ("the Rules"). The DAB shall be one or three members agreed by the Parties, as stated in the Appendix. In the event of disagreement, the members shall be appointed in accordance with the Rules.

15.2

Notice of Dissatisfaction

If a Party is dissatisfied with the decision of the DAB or if no decision is given within the time set out in the Rules, the Party may give notice of dissatisfaction to the other Party with copies to the DAB and the Engineer referring to this Sub-Clause within 28 days of receipt of the decision or the expiry of the time for the decision. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding on the Parties. If notice of dissatisfaction is given within the specified time, the decision shall be binding on the Parties who shall give effect to it without delay unless and until the decision of the DAB is revised by arbitration.

15.3

Arbitration

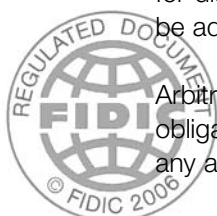
Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by the Parties:

- a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
- b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- c) the arbitration shall be conducted in the language referred to in Sub-Clause 1.5.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

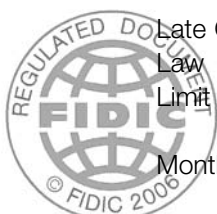
Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.



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AGREEMENT

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RULES FOR ADJUDICATION

NOTES FOR GUIDANCE

Form of Contract FOR DREDGING AND RECLAMATION WORKS

First Edition 2006

Rules for Adjudication

NOT FOR CONTRACT USE

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

Rules for Adjudication

referred to in Sub-Clause 15.1

General

- 1 Any reference in the Conditions of Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.
- 2 Definitions in the Contract shall apply in these Rules.

Appointment of Adjudicator

- 3 The Parties shall jointly ensure the appointment of the DAB. The DAB shall comprise one or three suitably qualified members.
- 4 If for any reason the appointment of the DAB is not agreed at the latest within 28 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Contract or, if none, to the President of FIDIC or his nominee, to complete the appointment of the DAB, and such appointment shall be final and conclusive.
- 5 A member's appointment may be terminated by mutual agreement of the Parties. The DAB's appointment shall expire when the Works have been completed or when any disputes referred to the DAB shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

- 6 Each member is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.
- 7 The members shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Works form part other than in accordance with these Rules.
- 8 No member may be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Contract.
- 9 The members shall treat the details of the Contract and all activities and hearings of the DAB as confidential and shall not disclose the same without the prior written consent of the Parties. The DAB shall not, without the consent of the Parties, assign or delegate any of its work under these Rules or engage legal or technical assistance.

A member may resign by giving 28 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of a member under these Rules, the Parties shall agree upon a replacement within 14 days or Rule 4 shall apply.



- 11 A member shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the member's duties unless the act or omission is shown to have been in bad faith.
- 12 If a member shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the DAB are rendered void or ineffective.

Payment

- 13 Each member shall be paid the fees and expenses set out in the Adjudicator's Agreement.
- 14 The retainer fee, if applicable, shall be payment in full for:
 - (a) being available, on 28 days' notice, for all hearings and Site visits;
 - (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
 - (c) all services performed hereunder except those performed during the days referred to in Rule 15.
- 15 The daily fee shall be payable for each working day preparing for or attending Site visits or hearings or preparing decisions including any associated travelling time.
- 16 The retainer and daily fees shall remain fixed for the period of 24 months.
- 17 All payments to the members shall be made by the Contractor who will be entitled to be reimbursed half by the Employer. The Contractor shall pay invoices addressed to him within 28 days of receipt. Each member's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a Site visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. A member may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days' prior notice has been given to both Parties.
- 18 If the Contractor fails to pay an invoice addressed to it, the Employer shall be entitled to pay the sum due to the member and recover the sum paid from the Contractor.

Procedure for Obtaining Adjudicator's Decision

- 19 A dispute between the Parties may be referred in writing by either Party to the DAB for its decision, with a copy to the other Party. If the DAB has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of a DAB. A reference shall identify the dispute and refer to these Rules.
- 20 The DAB may decide to visit the Site. The DAB may decide to conduct a hearing in which event it shall decide on the date, place and duration for the hearing. The DAB may request that written statements from the Parties be presented to him prior to, at or after the hearing. The Parties shall promptly provide the DAB with sufficient copies of any documentation and information relevant to the Contract that he may request.



- 21 The DAB shall act as impartial experts, not as arbitrators, and shall have full authority to conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the DAB shall have power to:
- (a) decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (b) make use of the members' own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) decide upon the payment of interest in accordance with the Contract,
 - (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,
 - (f) refuse admission to hearings to any persons other than the Employer, the Contractor and their respective representatives and the Engineer, and to proceed in the absence of any Party who the DAB is satisfied received notice of the hearing.
- 22 All communications between either of the Parties and the DAB and all hearings shall be in the language of the Adjudicator's Agreements. All such communications shall be copied to the other Party.
- 23 No later than the fifty-sixth day after the day on which the DAB received a reference or, if later, the day on which the last of the Adjudicator's Agreements came into effect, the DAB shall give written notice of its decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.
- 24 The DAB shall endeavour to reach a unanimous decision, failing which the majority shall issue its decision. The other member may publish his dissenting view.
- 25 If one member fails to attend a hearing, the other members of the DAB may proceed in the member's absence, unless the Parties agree otherwise.
-



Adjudicator's Agreement

Identification of Project:

(the "Project")

Name and address of the Employer:

(the "Employer")

Name and address of Contractor:

(the "Contractor")

Name and address of member:

(the "member")

Whereas the Employer and the Contractor have entered into a contract ("the Contract") for the execution of the Project and wish to appoint the member to the DAB in accordance with the Rules for Adjudication ["the Rules"].

The Employer, Contractor and member agree as follows:

1. The Rules and the dispute provisions of the Contract shall form part of this Agreement.
2. The member shall be paid:

A retainer fee of _____ per calendar month
(where applicable)

A daily fee of _____

Expenses (including the cost of telephone calls, courier charges, faxes and telexes incurred in connection with his duties: all reasonable and necessary travel expenses, hotel accommodation and subsistence and other direct travel expenses).

Receipts will be required for all expenses.



3. The member agrees to act in accordance with the Rules and has disclosed to the Parties any previous or existing relationship with the Parties or others concerned with the Project.
4. This Agreement shall be governed by the law of _____
5. The language of this Agreement shall be _____

SIGNED BY _____

for and on behalf of the Employer in the presence of

Witness _____
Name _____
Address _____
Date _____

SIGNED BY _____

for and on behalf of the Contractor in the presence of

Witness _____
Name _____
Address _____
Date _____

SIGNED BY _____

the member in the presence of

Witness _____
Name _____
Address _____
Date _____



Particular Conditions

Note

It is intended that this contract will work satisfactorily without any Particular Conditions. However, if the requirements of the project make it desirable to amend any Clause or to add provisions to the Contract, the amendments and additions should be set out on pages headed Particular Conditions. Care should be taken with the drafting of such Clauses especially in view of the high priority given to the Particular Conditions by Sub-Clause 1.3.

NOT FOR CONTRACT USE

AGREEMENT

GENERAL CONDITIONS

RULES FOR ADJUDICATION

NOTES FOR GUIDANCE

Form of Contract FOR DREDGING AND RECLAMATION WORKS

First Edition 2006

Notes for Guidance

NOT FOR CONTRACT USE

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES

Notes for Guidance

(not forming part of the Contract)

General

The objective of this Contract is to express in clear and simple terms traditional procurement concepts. The Contract is intended to be suitable for all types of dredging and reclamation work and ancillary construction. If it is required that the Contractor should undertake design, this is also provided for.

There are no Particular Conditions, although these Notes contain alternative wording for consideration in particular circumstances. All necessary additional information is intended to be provided in the Appendix, which is to be read as part of the Agreement. This is a single document combining both Offer and Acceptance reflecting the relatively straightforward nature of the projects envisaged.

One result of this simple form of Contract is that there is an increased burden on the Employer to set out in the Specification and Drawings the full scope of works, including the extent of any design to be done by the Contractor.

As is usual for dredging and reclamation work, provision is made for an Engineer who must act fairly.

Agreement

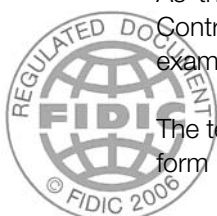
The printed form envisages a simple procedure of offer and acceptance. In order to avoid the traps and uncertainties that surround "letters of acceptance" and "letters of intent", it was thought preferable to promote a clear and unambiguous practice.

It is intended that the Employer will write in the Employer's name in the Agreement and fill in the Appendix where appropriate and send two copies to tenderers together with the Specification, Drawings etc forming the tender package. In respect of both copies, the Contractor is to complete, sign and date the Offer section and complete any remaining spaces in the Appendix. Having decided which tender to accept, the Employer signs the Acceptance section of both copies and returns one copy to the Contractor. The Contract comes into effect upon receipt by the Contractor of his copy.

If post-tender negotiations are permitted and changes in specification or price are agreed, then the form can still be used after the Parties have made and initialled the appropriate changes to their respective documents. The Contractor thus makes a revised offer in response to the Employer's revised tender documents and the revised offer is accepted by the Employer signing and returning the Acceptance form. If the changes are extensive, a new form of Agreement should be completed by the Parties.

As the Contract comes into effect upon receipt of the signed Acceptance by the Contractor, the Employer should take steps to establish when receipt occurs, for example by requiring the Contractor to collect and sign for the Agreement.

The tendering procedure will follow the law of procurement in the Country. The printed form serves the function of a tender form until both Parties have signed.



When the applicable law imposes any form of tax such as VAT on the Works, the Employer should make clear whether tenderers should include such taxes in their prices. Similarly, if payment is to be made in whole or in part in a currency other than the currency of the Country, the Employer should make this clear to tenderers (see Sub-Clause 11.8).

Appendix

Any Notes for Guidance on the completion of the Appendix are to be found in the Notes to the Clauses concerned. The Employer should complete the Appendix as indicated prior to inviting tenders and should insert "not applicable" against the space next to any Sub-Clause which he does not wish to use or have the Appendix completed. Conversely, tenderers should complete all the spaces that have been left open by the Employer. Tenderers may be asked to insert a Time for Completion at 1.1.10 and for completion of Sections if none is specified. Where tenderers are required to submit design with their tenders, the documents containing the tendered design should be identified by the tenderer against item 1.1.10 of the Appendix.

A number of suggestions have been made in the Appendix, such as the time for submission of the Contractor's programme under Sub-Clause 7.2 and the amount of retention under Sub-Clause 11.4. If the Employer adopts these suggestions, no action is required. Otherwise, they should be deleted and replaced.

General Provisions

1.1 **Definitions.** The definitions in these Conditions are not all the same as those to be found in other FIDIC Contracts. This results from the desire for simplicity in this form of Contract. Significantly different definitions include Commencement Date, Defined Risks, Site, Variation and Works.

1.1.1 **"Contract".** The list of documents serves two purposes: firstly, to identify which documents form part of the Contract; and secondly, to provide an order of priority in the event of conflict between them (see Sub-Clause 1.3).

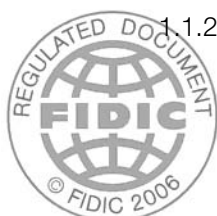
Document identification is necessary to avoid any possible doubt, for example because specifications have been subject to revisions. A complete list of Drawings is always desirable and could be attached on a separate sheet.

There should normally be no need for Particular Conditions but if amendments to these Conditions are required, they should be inserted on the sheet headed Particular Conditions and given priority over the General Conditions. If none, delete the reference in the Appendix. If there is no bill of quantities, delete the reference in the Appendix.

If there are additional documents that are required to form part of the Contract, such as schedules of information provided by the Contractor, these should be added by the Employer. Consideration should be given in each case to the required priority.

If a letter of acceptance is used, it should be given high priority, with or in place of the Agreement, for example.

1.1.2 **"Specification".** The Specification should set out in clear terms any design that the Contractor is required to undertake, including the extent to which any design proposals are to be submitted with the tender. If none, the reference in the Appendix to the Contractor's tendered design should be deleted.



1.1.6 **"Engineer"**. The duties of the Engineer should include inspection of the Works. These inspection duties should be described in detail in the Specification.

1.1.8 **"Commencement Date"**. The starting date for the Contract is 28 days after the date when the Contractor receives the Agreement signed by the Employer, unless the Parties agree otherwise. Therefore, the Employer should ensure an adequate official record of this event.

1.1.16 **"Force Majeure"**. This may include, but is not limited to, exceptional events or circumstances of the kind listed below so long as all of the four conditions stated in the definition have been satisfied:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's and his subcontractors' personnel,
- d) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radioactivity, and
- e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

1.1.19 **"Section"**. The consequences of deciding to have sectional completion of the Works are described in the Notes under Sub-Clauses 7.1 and 7.2 below.

1.1.23 **"Works"**. This term is intended to cover all the obligations of the Contractor, including any design and the remedying of defects.

1.5 **Communications**. The problem of language is addressed by requiring all written communications to be in the language stated in the Appendix. Any arbitration will be conducted in the specified language, as required by Sub-Clause 15.3.

1.6 **Statutory Obligations**. Changes to the law after the date 28 days prior to the latest date for submission of tenders are at the Employer's risk and any delay or additional cost are recoverable by the Contractor (see also Sub-Clause 6.1 below).

It is usual for Employers who are port and harbour authorities to waive fees and charges levied on users, in respect of their Contractors' activities. Restrictions on working hours and noise should be stated in the Specification.

The Employer

2.1 **Provision of Site**. Unless the Parties have agreed otherwise, the Site must be handed over by the Employer to the Contractor on the Commencement Date. This is 28 days after the Contract has come into effect, which occurs when the signed Agreement has been returned by the Employer to the Contractor (see also Sub-Clause 1.1.8 above). Where the Site is to be shared with other contractors or will be used by shipping or other uses, this should be stated in the Specification.



- 2.2 **Permits and Licences.** If for any reason, permits etc may also be required from places other than the Country, this Sub-Clause could be confined by the addition at the end of the words:
“... in the Country but not elsewhere.”
- 2.3 **Site Data.** It is important that the Employer supplies all of the information gathered by the Engineer or others in designing the Works as part of the tender documents. This should comprise the results of all investigations into the Site, both marine and land. Interpretative notes should not be supplied as the Contractor is responsible for interpreting all data. It is not recommended that the tenderers are advised where they can inspect such data as this can lead to a challenge as to what information was made available. When considering the time allowed for tendering and when considering the time and cost of carrying out site investigations, particularly marine investigations, the Employer should note that in their own interests, compliance with this requirement is strongly advised.
- 2.4 **Employer's Authorised Person.** For the purposes of efficient and certain administration of the Contract, it is considered essential that the Employer should nominate an authorised representative. The Contractor should know who in the Employer's organisation is authorised to speak and act for the Employer at any given time. This individual should be named in the Appendix.

The Engineer

- 3.1 **The Engineer's Duties and Authority.**
The principal duties of the Engineer under the Conditions are to be found in the following Sub-Clauses:
1.3, 3.1, 3.2, 3.3, 4.2, 4.3, 5.1, 7.3, 8.2, 8.3, 9.1, 9.3, 10.1, 10.2, 10.5, 11.1 to 11.7 inclusive, 12.4, and 13.4.
- To the extent that the Employer has appointed the Engineer to carry out duties under the Contract, he should be careful not to perform such duties himself, in order to avoid the risk of conflicting instructions and decisions.
- It is important for the Employer to set out clearly in the Appendix any limits he wishes to impose on the Engineer's authority to instruct Variations. After the Contract is awarded new limitations cannot be imposed without the agreement of the Contractor. The limits envisaged could be financial, relating to extensions of time or scope, i.e. a function or facility beyond that described in the Specification or shown on the Drawings. In the event of the Employer requiring a change beyond the limits set by him for the Engineer, the Employer has to either instruct the change himself, or inform the Contractor that the Engineer has special permission to issue the change as a Variation. Any change instructed by the Employer would not be a Variation in accordance with the Contract but would constitute an additional agreement between the Contractor and the Employer and as such the terms of the Contract with regard to valuation etc. would not necessarily apply.

In the event of the Employer not wishing to engage an Engineer so as to administer the Contract himself, the above listed Sub-Clauses will need amending in the Particular Conditions to allow the Employer's name to be substituted for these duties in lieu of the Engineer.

Approvals. The term “approval” is only used in the Conditions in relation to the performance security at Sub-Clause 4.4 and insurances at Sub-Clause



14.1. It is important that risks such as those of poor workmanship or Contractor's design are not transferred to the Employer unintentionally. The Sub-Clause is intended to prevent argument.

The Contractor

- 4.1 **General Obligations.** It is important that the Contract contains some benchmark standard with which the Contractor is required to comply. If a more specific set of standards could be referred to for a particular project, then an amendment in the Particular Conditions would be desirable.
- 4.4 **Performance Security.** Suggested forms of performance security are given in Annex A: Demand Guarantee and Annex B: Surety Bond. However, local commercial practice often dictates the form. The amount and a reference to the desired form of any required security should be set out in the Appendix. It is common practice for the amount of the performance security to be reduced pro rata to the value of Sections or parts taken over by the Employer.

Design by Contractor

- 5.1 **Contractor's Design.** As with all design-build contracts it is essential that the Employer's requirements are described clearly and precisely including the purpose for which the Works are required. The Appendix should indicate to tenderers the Sub-Clause(s) in the Specification that set out the design requirement. Where the Employer procures any part of the design, the responsibility for design will be shared as this Contract makes the Contractor responsible only for design prepared by him. The extent of the Contractor's design obligation should therefore be clearly stated if disputes are to be avoided. The Conditions avoid the confusing concept of approval of design. Designs are submitted and may be returned with comments or rejected. In theory, the Engineer need not react at all, in which case the Engineer is expected to act in a timely manner. The risk of error in the Contractor's design remains with the Contractor regardless of approval, comments or silence from the Engineer. See also Sub-Clause 3.3.

To facilitate the requirement set out in this Sub-Clause it is recommended that a detailed procedure is included in the Specification, on the submission and resubmission of the Contractor's design.

- 5.2 **Responsibility for Design.** The Contractor's responsibility for his design remains, including fulfilment of the purpose for which the Works are required, as is made clear here and in Sub-Clause 3.3. In the event of conflict between the Specification and Drawings and the Contractor's tendered design, the order of priority in the Appendix makes it clear that the Employer's documents prevail. This means that if the Employer prefers the Contractor's tendered solution, the Specification and Drawings should be amended before the Employer accepts the Offer. Otherwise a Variation would be needed.

The Contractor must ensure that the parts of the Works designed by him are fit for their intended purposes.

If a Party wishes to protect the intellectual property in his design, provision must be made in the Particular Conditions.



Defined Risks

6.1

Defined Risks. This Sub-Clause gathers together in one place the grounds for extension of time under Sub-Clause 7.3, the grounds for claims under Sub-Clause 10.4, and the exclusions on the Employer's right for indemnity under Sub-Clause 13.2.

This Clause does not itself create an entitlement to time or money but is, in effect, a definition clause, defining the meaning of the term Defined Risks for the purposes of Sub-Clauses 7.3, 10.4 and 13.2. The definition of Defined Risks at Sub-Clause 1.1.15 refers to Sub-Clause 6.1.

Items (a) to (g) and (i) to (q) are excluded from the obligation to insure: see Sub-Clause 14.1.

In relation to the weather, it will be necessary to specify in the Appendix the conditions that are to be at the Employer's risk. The Appendix could well refer in turn to a section of the Specification. The weather that will bring a dredging project to a halt will normally depend on the dredging equipment mobilised. Different plant operating on the same project may be more or less susceptible to wave action, for example. If weather downtime is to be payable through the Bill of Quantities, the questions remain of programme and prolongation costs. What allowance should the Contractor have made for bad weather and the resultant prolongation costs? A given number of days could be specified. Alternatively the weather threshold can be specified. This should be defined as precisely as possible to avoid disputes. For example, the Contractor could be asked to allow for wave-heights up to a 20-year frequency. Beyond this, Sub-Clause 6.1(m) would apply and extension of time and prolongation cost may be claimable.

The Employer may elect to nullify this Sub-Clause 6.1(m) by stating that all climatic conditions are the Contractor's risk.

Item (h) addresses the natural catastrophes such as unseasonal hurricanes, tidal waves, volcanoes and such. It is not normally taken to be a "bad weather" provision.

Time for Completion

7.1

Execution of the Works. The Employer may decide, when preparing the tender documents, to have one Time for Completion for the whole of the Works, or alternatively, to have Sections of the Works for which separate earlier Times for Completion can be stated as well as for the whole of the Works. If the Employer elects to have Sections then it is necessary to:

- a) complete the definition of Sections shown at the end of the Appendix in respect of Time for Completion and amount payable due to failure to complete;
- b) clearly identify in the Specification and/or on the Drawings the extent of each Section, cross-referenced back to the Appendix;
- c) write the tender documents so that the tendered cost for each Section is shown separately.

See also the Notes under Sub-Clause 1.1.18 and 11.1.

Programme. The Appendix should stipulate any particular requirements as to the form and level of detail of programme and progress reports to be submitted. Where appropriate, the Appendix should also refer to the relevant section of the Specification, where these details can be given.



Where Contractor's design is required, the Appendix could stipulate that the programme should show the dates on which it is intended to prepare and submit drawings etc. If Sections are used, these should be identified on the programme.

7.3 **Extension of Time.** The test for entitlement to an extension of time is whether it is appropriate. This means that if an event under Sub-Clause 6.1 caused critical delay to the Works and it is fair and reasonable to grant an extension of time, the Engineer should do so. An extension of time should not be granted to the extent that any failure by the Contractor to give an early warning notice under Sub-Clause 10.3 contributed to the delay.

7.4 **Late Completion.** There is a maximum amount, which the Contractor is liable to pay for late completion, specified in the Appendix. 10% of the sum stated in the Agreement is suggested. If Sections are used, this 10% should apply to an aggregate of all the Sections and the whole of the Works.

Taking-Over

8.1 **Completion.** The procedure for taking over applies equally to the whole of the Works or to Sections, if used.

8.2 **Taking-Over Certificate.** In line with normal practice, it is not envisaged that the Works need be 100% complete before the Employer may take over. Once the Works are ready to be used for their intended purpose, the notice should be given.

If any tests are required to be completed prior to taking-over, these should be specified in the Specification. The definition of Works is broad enough to include any such tests.

8.3 **Taking-Over Part of the Works.** In addition to the provision for the Employer electing to prescribe Sections in the tender documents, the Engineer may issue a Taking-Over Certificate to enable the Employer to take over completed parts of the Works other than as defined in a Section, in accordance with the Employer's sole discretion. In this event, it is advisable to:

- a) consult with and give fair warning to the Contractor of this intention, and
- b) agree with the Contractor the value of the parts of the Works taken over for the purpose of adjusting the retention (Sub-Clause 11.6).

Special considerations may apply when the Site is in continuous use, for example by shipping.

Remedying Defects

9.1 **Remedying Defects.** There is no defined Defects Liability Period but during the period - normally 365 days - from the date of taking-over, the Engineer may notify the Contractor of defects. As this contract document allows for Sections or parts of the Works to be taken over in addition to the whole of the Works, it would not be unusual to have several 365 day periods for notifying defects to be in operation at the same time.

The Engineer may also notify defects at any time prior to taking-over any of the Works.

The liability of the Contractor for defects will not normally end with the expiry of the period stated in the Appendix. Although he is then no longer obliged



to return to Site to remedy defects, the defect represents a breach of contract for which the Contractor is liable in damages. This liability remains for as long as the law of the Contract stipulates, often 3, 6 or 10 years from the date of the breach. If this long-term liability is to be reduced or eliminated, a Clause in the Particular Conditions is required.

The Contractor must remedy such defects within a reasonable time. If he fails to do so, the Employer may employ others for that purpose at the Contractor's cost.

9.2 **Dredging Works.** Dredging is excluded from the provision in Sub-Clause 9.1 with regard to the period after the issue of the Taking-Over Certificate. The extent of dredging works is defined in the Appendix but it is also important that the Specification and Drawings clearly show what the Employer intends to be classed as dredging in the Contract. See also the Notes under Sub-Clause 11.1 where it is required that the value of dredging is clearly separated in the tender documents so that retentions can be properly apportioned.

9.3 **Uncovering and Testing.** With regard to inspection of work before covering up, the requirements should be stated in the Specification.

Variations and Claims

10.1 **Right to Vary.** "Variation" is defined to include any change to the Specification or Drawings included in the Contract. If the Employer requires a change to part of the Works designed by the Contractor either as part of his tender or after the Contract has been awarded, then this has to be done by way of an addition to the Specification or Drawings, which by Sub-Clause 5.2 will then prevail over Contractor's design.

The Contractor's position has been protected to prevent Variations being issued which could unfairly harm his trading position due to the nature of dredging and reclamation works. The provisions are the exclusion of:

- a) Variations to omit work and give it to another contractor or to be carried out by the Employer himself, or
- b) Variations that will require the mobilisation of further major dredging equipment unless the time and cost effect can be agreed in advance.

It is recommended that in the event of either of the above situations becoming necessary on a project, the Employer and/or the Engineer should enter into the earliest discussion with the Contractor to agree an amicable way of allowing the Contract to proceed. In addition, the Engineer may apply this principle to any Variation by requiring the Contractor to submit quotations with time and cost effects for agreement prior to his issue of the Variation. It would be in the interest of both the Employer and the Contractor if Variations could be issued for which both time and cost effects were agreed. The Contract allows, however, for the issue of Variations in the event that this has not been possible, in which case the process of valuation and extension of time will be dealt with in accordance with Sub-Clauses 7.3 and 10.2 respectively.



10.2 **Valuation of Variations.** This Sub-Clause sets out alternative procedures for the valuation of Variations, to be applied in the order of priority given. It applies equally to omissions as to additional works.

- a) an agreed lump sum should be the first method to be considered as

it can encompass the true cost of a Variation and avoid subsequent dispute over the indirect effect. The Employer can invite the Contractor to submit an itemised make-up (Sub-Clause 10.5) before instructing the Variation so that an agreed lump sum can form part of the instruction

- b) alternatively, a more traditional approach can be taken by valuing the Variation at rates in the bill of quantities and any schedules

or using these rates as a basis c)

or using new rates d)

- e) daywork rates are normally used when the Variation is of an indeterminate nature or is out of sequence with the remaining Works. To ensure reasonable daywork rates, provision should be made for these to be priced competitively in the tender documents.

10.3 **Early Warning.** This Sub-Clause and Sub-Clause 10.5 require the Contractor to notify the Engineer of events promptly and to detail any claim within 28 days. If the effects of the event are increased or if the ability of the Engineer to verify any claim is affected by the failure to notify, then the Employer is protected.

10.4 **Contractor's Right to Claim.** This Sub-Clause entitles the Contractor to claim his Cost in the event of any of the Defined Risks but subject to one qualification. If there is a specific provision in the Contract, for example a priced item in the bill of quantities for time-related overheads, this would replace the actual Cost of delay for time-related overheads, in the event of a delay attributed to a Defined Risk.

10.6 **Employer's Claims.** This Sub-Clause allows for the Employer to claim against the Contractor in connection with the Contract. A common example of a claim in connection with the Contract would be the Employer remedying defects under Sub-Clause 9.1 and claiming the cost back from the Contractor.

Contract Price and Payment

11.1

Valuation of the Works. Normally only one of the options in the Appendix should be used to indicate how the sum in the offer is be calculated and presented. It is important that the tender documents are written so that the costs of dredging are kept separate from the remaining works to allow for the operation of Sub-Clauses 9.1, 11.5 and 11.6. In addition, the tender documents should separate the works included for in different Sections (Sub-Clause 7.1 refers).

The following explains what is intended by the different forms of payment:

Lump sum price	A lump sum offer without any supporting details. This would be used for very minor works where Variations are not anticipated and the Works will be completed in a short period requiring only one payment to the Contractor.
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Lump sum price with schedules of rates	A lump sum offer supported by schedules of rates prepared by the tenderer. This would be a larger contract where Variations and stage payments would be required. If the Employer does
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not have the resources to prepare his own bill of quantities then this alternative would be suitable.

Lump sum price with bill of quantities

A lump sum offer based on bill of quantities prepared by the Employer. This would be the same as last but where the Employer has the resources to prepare his own bill of quantities. A better contract would result with an Employer's bill of quantities

Remeasurement with bill of quantities

A sum subject to remeasurement at the rates offered by the tenderer in the bill of quantities prepared by the Employer. This would be the same as last but would suit a contract where many changes are envisaged to the Works after the Contract has been awarded

Cost plus

An estimate prepared by the tenderer which will be replaced by the actual cost of the Works calculated in accordance with the terms set by the Employer. This would suit a project where the extent of work cannot be ascertained before the Contract is placed. In the tender documents, provision should be made for tenderers to indicate their allowances for overheads and profit.

However, if for some special reason, more than one option is selected, for example there is a remeasurable element in a lump sum Contract, then the details should be carefully defined.

In the event of a contract for works of long duration, a new Clause could be inserted at Sub-Clause 11.1 to allow adjustment for the rise and fall in the cost of resources such as labour, materials, fuel and other imports to the Works. Such a Clause could be adapted from the other FIDIC Conditions of Contract.

11.2

Advance Payment. Provision is made in this Sub-Clause for an advance payment. Employers should be encouraged to allow for this due to the high mobilisation costs dredging and reclamation works require. The Appendix requires completion by the Employer as part of the tender documents to state both the amount and the terms of repayment. For the latter, a simple formula of repaying the full amount by an equal deduction from each interim payment certificate is advised.

If the Employer requires an advance payment guarantee, an example form of such a guarantee is given in Annex C.

11.3

Monthly Statements. Interim payment can be based on valuation of the Works, which would also be appropriate for remeasurement and cost plus Contracts. Payment could also be based on the achievement of milestones or a schedule of activities to which values are assigned.

Alternatively, if the Contract is for a lump sum, consideration should be given as to how the work is to be valued for the purposes of interim payments. In completing the Appendix for Sub-Clause 11.1, the Employer may request tenderers to submit a cash flow forecast linked to a stage payment proposal



for agreement. This would be reviewed in the event of an extension of time made in accordance with Sub-Clause 7.3.

If local law or practice so dictates, an invoice may also be required, in which case it could be submitted with the statement.

- 11.4 **Interim Payments.** The deduction of retention is sometimes replaced by the provision of security by the Contractor to the Employer. Alternatively, the entire retention sum deducted is released after taking-over upon the provision by the Contractor of security. In either event, suitable text would be required in the Particular Conditions.

If the Employer requires a retention money guarantee, an example form of such a guarantee is given in Annex D.

- 11.5 **Payment of Retention - Dredging Works.** It should be noted that as dredging is not subject to the remedying of defects during a prescribed period after the issue of a Taking-Over Certificate, no retention should be withheld on these works once the Taking-Over Certificate is issued. As the retention is stated by way of a percentage on the value of the work, so long as the value of dredging (and of Sections and of parts of the Works) are kept separate as described in these Notes above, the adjustment of retention for both this Sub-Clause and Sub-Clause 11.6 can be simply carried out.

- 11.6 **Payment of Retention - Other Works.** The release of the second part of the retention will serve as confirmation that all notified defects have been remedied.

- 11.8 **Currency.** It is assumed that payments will be in a single currency. If this is not the case, the proportions of different currencies should be stated in the Appendix and provision made in the Specification or the Particular Conditions as to how payment is to be made.

Default

- 12.1 **Default by Contractor.** The Employer may terminate the Contract if the defaulting Contractor does not respond to a formal notice by taking all practicable steps to put right his default. This recognises that not all defaults are capable of correction in 14 days. If termination takes place, the Employer may wish to take over and use the Contractor's Equipment to complete the Works or for safety or stability of the Works reasons. Care should be taken, however, if the equipment on Site is hired: no specific provision is made to cover this situation and the Employer is unlikely to be able to retain such equipment. Equally, there are significant practical difficulties with the Employer taking over a major piece of dredging equipment, not least with the insurance and safety regulations for the vessel. In practice, it is likely only to be smaller items of equipment that the Employer is able sensibly to take over.

- 12.2 **Default by Employer.** This provision provides the Contractor's main remedy for non-payment. 7 days after the Employer's receipt of a default notice, which must refer to Sub-Clause 12.2, the Contractor may suspend all or part of his work. 21 days later the option to terminate arises if the Employer persists with non-payment or other default. The Contractor must use his right to terminate within 21 days or lose it. This is to prevent a party abusing a right to terminate in his dealings with the other party for the remainder of the project.

If Contractor's Equipment is essential for the safety or stability of the Works, the Employer will be obliged to agree terms with the Contractor for the retention of such equipment. Local law will often protect the Employer from the immediate and reckless removal of essential items.

12.3 **Insolvency.** The right of the Employer to retain the Contractor's Equipment may clash with the right of a liquidator or receiver to realise the assets of an insolvent Contractor. Reference to the applicable laws, both in the country of the project and in an insolvent Contractor's country, would be necessary.

12.4 **Payment upon Termination.** This Sub-Clause enables the financial aspects of the Contract to be resolved quickly and without the necessity to await the completion of the Works by others. By specifying the damages payable to the innocent party for the defaults leading to the termination, much delay, complication and scope for dispute are avoided. The Employer's costs in obtaining a replacement contractor will generally be higher than the Contractor's loss of profit.

Risk and Responsibility

13.1 **Contractor's Care of the Works.** Although the Contractor is responsible for the Works prior to the taking-over of the whole of the Works or any Section or part, he is protected by the obligation to insure the Works under Clause 14 and by his ability to recover his Cost under Sub-Clause 10.4 if one of the Defined Risks occurs.

13.2 **Contractor's Indemnities.** This limitation on liability will include damages for delay, indemnities etc. The figure is typically the sum stated in the Agreement.

13.3 **Limit of Contractor's Liability.** It is suggested that the overall limit on the Contractor's liability in respect of damage to the Works should be the value of the Contract, i.e. the figure stated in the Agreement. With regard to damage to the Employer's property or death to the Employer's or Engineer's personnel, the limit should be the amount of insurance required under Sub-Clause 14.1 and for indemnity to the Employer in respect of Third Party claims for damage to property or for death or injury, there should be no limit. For consequential losses, the Appendix sets out the recommendations for claims arising out of the above different types of liability. These limits, as indicated in the Appendix, can be amended by the Employer before inviting tenders, if desired.

13.4 **Force Majeure.** To qualify as Force Majeure, events must prevent performance of an obligation. See also these Notes and the definition at Sub-Clause 1.1.15. Notice must be given at once. In countries where the risk of Force majeure is greater, consideration should be given to amendments based on the provisions in the other FIDIC Conditions of Contract.

Insurance

14.1 **Arrangements.** The Employer should set out his precise requirements in the Appendix. However, bearing in mind the very specialised nature of the subject, the Employer is strongly recommended to consult with his advisers beforehand. For dredging works, insurance of the Works, Materials, Plant and fees is not possible. For insurance policies in the joint names, the policy should contain a provision stating that insurers will waive their right of subrogation on the insured parties.



In general, marine insurance policies used by dredging companies will cover all vessels of the dredging company and sometimes land-based equipment may be included. Therefore it is not always possible to make specific arrangements in the marine insurance policy for specific projects.

Although the marine insurance policy may name the Employer as an insured party, settling and payment of claims is normally done by the Contractor.

Generally the policy will cover particular and general losses of the vessels and third party liability for losses caused by the vessels (property losses as well as death or injury). On a contract for only dredging works, an extended marine insurance policy may be sufficient to cover the risks of the project, as mentioned in the Appendix. In such a case, double insurance should be avoided. Thus, third party liability insurance would normally be mandatory. For dredging works third party liability generally is covered under the tenderer's marine insurance policy and for non-dredging works the Contract is likely to fall within the tenderer's Contractors' All Risk (CAR) insurance policy.

Except for marine insurance, the Employer may take out the insurances instead of the Contractor. If so, the following should be used as Particular Conditions in place of Sub-Clause 14.1 and 14.2:

14.1 *The Contractor shall, prior to the Commencement Date, provide the Employer with evidence that in the amounts and with the exclusions stipulated in the Appendix, the required marine insurance policy is in force and that the premiums have been paid.*

14.2 *The Employer shall, prior to the Commencement Date, effect the other insurances in the joint names of the Parties of the types, in the amounts and with the exclusions stipulated in the Appendix. The Employer shall provide the Contractor with evidence that any required policy is in force and that the premiums have been paid.*

It should be noted that if the Contractor fails to meet the above mentioned requirements, the Employer may give notice under Sub-Clause 12.1 and that in the event of the Employer's failure to insure, the Contractor may give notice under Sub-Clause 12.2.

14.2

Failure to Insure. It is recommended that where ever possible, the Employer inspects the Contractor's policies prior to placing the Contract and that if these policies are not acceptable, or are unlikely to become so, then serious consideration should be given to not placing the Contract with the Contractor concerned.

Resolution of Disputes

15.1

Adjudication. There are advantages in appointing the members of the DAB from the outset even though they may not be required to take any action unless and until a dispute is referred to the DAB. Delays will inevitably occur if the parties initiate the procedure to appoint members only when a dispute has arisen. It is therefore recommended that the Employer propose a person to act as member either at tender stage or shortly after the Agreement is signed and that the appointment of the DAB is discussed and agreed as soon as possible.

It is intended that all opinions, instructions, determinations, certificates, valuations or other decisions made by the Employer or the Engineer should



be capable of being reviewed by the DAB and, if required, by an arbitral tribunal.

- 15.3 **Arbitration.** Arbitration may not be commenced unless the dispute has first been the subject of adjudication and a notice of dissatisfaction has been duly given. The ICC Court of Arbitration and its Secretariat in Paris appoints and replaces arbitrators, receives agreed terms of reference, approves the form of awards, and generally monitors progress and the performance of arbitrators.
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Annexes

FORMS OF SECURITIES

Note

Acceptable form(s) of security should be included in the tender documents, annexed to the Particular Conditions. The following example forms, which incorporate Uniform Rules published by the International Chamber of Commerce (the "ICC", which is based at 38 Cours Albert 1er, 75008 Paris, France), may have to be amended to comply with the applicable law. Although the ICC publishes guides to these Uniform Rules, legal advice should be taken before the securities are written. Note that the guaranteed amounts should be quoted in all the currencies, as specified in the Contract, in which the guarantor pays the beneficiary.

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Annex A EXAMPLE FORM OF PERFORMANCE SECURITY - DEMAND GUARANTEE

[See above comments on Sub-Clause 4.4]

Brief description of Contract _____

Name and address of Beneficiary _____

_____ (whom the Contract defines as the Employer).

We have been informed that _____ (hereinafter called the "Principal") is your contractor under such Contract, which requires him to obtain a performance security.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the "guaranteed amount", say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal is in breach of his obligation(s) under the Contract, and
- (b) the respect in which the Principals in breach

[Following the receipt by us of an authenticated copy of the Taking-Over Certificate for the whole of the works under clause 8 of the conditions of Contract, such guaranteed amount shall be reduced by ____ % and we shall promptly notify you that we have received such certificate and have reduced the guaranteed amount accordingly.] ⁽¹⁾

Any demand for payment must contain your [minister's/directors'] ⁽¹⁾ signatures(s), which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (the date 70 days after the expected expiry of the Works) _____ (the "expiry date") when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the Taking-Over Certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of _____ and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date _____ Signature(s) _____

(1) When writing the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses []

Annex B EXAMPLE FORM OF PERFORMANCE SECURITY - SURETY BOND

[See above comments on Sub-Clause 4.4]

Brief description of Contract _____

Name and address of Beneficiary _____

_____ (together with successors and assigns, all as defined in the Contract as the Employer).

By this Bond, (name and address of contractor) _____ (who is the contractor under such Contract) as Principal and (name and address of guarantor) _____ as Guarantor are irrevocably held and firmly bound to the Beneficiary in the total amount of (The "Bond Amount", say: _____) for the due performance of all such Principal's obligations and liabilities under the Contract. [Such Bond Amount shall be reduced by _____ % upon the issue of the taking-over certificate for the whole of the works under clause 8 of the conditions of the Contract.] ⁽¹⁾

This Bond shall become effective on the Commencement Date defined in the Contract.

Upon Default by the Principal to perform any Contractual Obligation, or upon the occurrence of any of the events and circumstances listed in sub-clause 12.1 of the conditions of the Contract, the Guarantor shall satisfy and discharge the damages sustained by the Beneficiary due to such Default, event or circumstances, ⁽²⁾ Except that the total liability of the Guarantor shall not exceed the Bond Amount.

The obligations and liabilities of the Guarantor shall not be discharged by any allowance of time or other indulgence whatsoever by the Beneficiary to the Principal, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Principal or the Beneficiary, or by any other matters, whether with or without the knowledge or consent of the Guarantor.

Any claim under this Bond must be received by the Guarantor or on before (the date six months after the expected expiry of the Works) _____ (The "Expiry Date") when this Bond shall expire and shall be returned to the Guarantor.

The benefit of this Bond may be assigned subject to the provisions for assignment of the Contract, and subject to the receipt by the Guarantor of evidence of full compliance with such provisions.

This Bond shall be governed by the law of the same country (or other jurisdiction) as that which governs the Contract. This Bond incorporates and shall be subject to the Uniform Rules for Contract Bonds, published as number 524 by the International Chamber of Commerce, and words used in this Bond shall bear the meanings set out in such Rules.

Wherefore this Bond has been issued by the Principal and the Guarantor on (date) _____

Signature(s) for and on behalf of the Principal _____

Signature(s) for and on behalf of the Guarantor _____

(1) When writing the tender documents, the writer should ascertain whether to include the optional text, shown in parentheses[]

(2) Insert: [and shall not be entitled to perform the Principal's obligations under the Contract].

Or: [or at the option of the Guarantor (to be exercised in writing within 42 days of receiving the claim specifying such Default) perform the Principal's obligations under the Contract.]

Annex C EXAMPLE FORM OF ADVANCE PAYMENT GUARANTEE

[See above comments on Sub-Clause 11.2]

Brief description of Contract _____

Name and address of Beneficiary _____
_____ (whom the Contract defines as the Employer).

We have been informed that _____ (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive an advance payment, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the "guaranteed amount", say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal has failed to repay the advance payment in accordance with the conditions of the Contract, and
- (b) the amount which the Principal has failed to repay.

This guarantee shall become effective upon receipt [or the first installment] of the advance payment by the Principal. Such guaranteed amount shall be reduced by the amounts of the advance payment repaid to you, as evidenced by the Engineer's certificates issued under sub-clause 11.4 of the conditions of the Contract. Following receipt (from the Principal) of a copy of each certificate, we shall promptly notify you of the revised guaranteed amount accordingly.

Any demand for payment must contain your signature(s), which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us as this office on or before (the date 70 days after the expected expiry of the Time for Completion) (the "expiry date") when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the advance payment has not repaid by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the advance payment has not been repaid and that this guarantee has not been extended.

This guarantee shall be governed by the laws of _____ and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date _____ Signature(s) _____

Annex D EXAMPLE FORM OF RETENTION MONEY GUARANTEE

[See above comments on Sub-Clause 11.4]

Brief description of Contract _____

Name and address of Beneficiary _____

_____ (whom the Contract defines as the Employer).

We have been informed that _____ (hereinafter called the "Principal") is your contractor under such Contract and wishes to receive early payment of (part of) the retention money, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we (name of bank) _____ hereby irrevocably undertake to pay you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of _____ (the "guaranteed amount" say: _____) upon receipt by us of your demand in writing and your written statement stating:

- (a) that the Principal has failed to carry out his obligation(s) to rectify certain defect(s) for which he is responsible under the Contract, and
- (b) the nature of such defect(s).

At any time, our liability under this guarantee shall not exceed the total amount of retention money released to the Principal by you, as evidenced by the Engineer's certificates issued under Sub-Clause 11.4 of the Conditions of the Contract with a copy being passed to us.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (the date 70 days after the expected expiry of the Defects Notification Period for the Works) _____ (the "expiry date") when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the Contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay you such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of _____ and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the International Chamber of Commerce, except as stated above.

Date _____ Signature(s) _____



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