



## Licence Agreements for modifying FIDIC Publications

### 1. Introduction

FIDIC's publications are copyrighted, the word FIDIC that is incorporated in the title of any FIDIC publication is trademarked, and FIDIC publications include Terms of Use.

However, many FIDIC documents are widely used benchmark standards, and users wishing to adopt and disseminate this best practice often approach FIDIC for permission to reproduce text in their own publications or documents. So the rules for the licensed use of FIDIC publications must be clear and easily understood.

In the particular case of FIDIC Conditions of Contract, the conditions comprise General Conditions, Particular Conditions and ancillary Forms. Under the Terms of Use, users are expected to make use of documents included in Particular Conditions and Forms, so these components, while copyrighted, are made freely available for completion and modification by the user.

FIDIC's policy regarding the use of its Conditions of Contract is: a) under the Terms of Use, the General Conditions should be used "as is" without modification; b) to question the need to modify General Conditions, which have been carefully drafted to ensure that there are no inconsistencies: modifying a General Condition clause can introduce ambiguities making a contract unworkable and discrediting FIDIC.

For FIDIC General Conditions of Contract, the requirement to use "as is" means that only a printed copy purchased from FIDIC or a copy printed from a protected-access encrypted file supplied by FIDIC can be incorporated into tender documentation.

Photocopying of a FIDIC document is illegal, so photocopied General Conditions of Contract must not be either adjusted or incorporated into documentation released into the public sphere.

Some users of FIDIC contracts seek permission to prepare and distribute amended General Conditions instead of adopting unchanged General Conditions and introducing amendments in Particular Conditions. For example, clients ranging from governments adopting the *FIDIC Client/Consultant Model Services Agreement* for procurement systems, international agencies adopting the *FIDIC Construction Contract* for client-designed infrastructure projects, and multinational companies wanting to modify the *FIDIC Plant and Design-Build Contract* to match specific installation requirements regularly approach FIDIC, either directly or through drafting specialists acting on their behalf, for permission to prepare amended General Conditions.

Plagiarising any copyrighted publication is a punishable offence, and the use of conditions of contract that copy wording from FIDIC General Conditions can have unpredictable and serious consequences, particularly if the conditions become the basis for litigation.

### FIDIC SECRETARIAT

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## 2. Licensing principles

### 2.1. Background

The principles upon which FIDIC licences documents, and more particularly, contracts will be detailed, given an increasing number of requests by users to prepare amended General Conditions instead of using the recommended approach of standard General Conditions and Particular Conditions.

Before outlining possible licensing principles it is necessary to review the types of licences sought and granted. Virtually every combination can be envisaged, but certain types predominate.

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### 1. Reproduce/browse General Conditions (GCs)

Single document	Print GCs x times	Standard product User buys a product (access protected or watermarked)
	Browse GCs	Standard product User buys a product (access protected or watermarked)
	Copy GCs	Not allowed
	Produce PCs and merge with GCs	Prototype service considered
Multiple documents	Print GCs x times	Standard product User buys a collection (access protected or watermarked)
	Browse GCs	Standard product; user buys a collection (access protected or watermarked)
	Copy GCs	Not allowed

### 2. Modify General Conditions (GCs)

Licenses to prepare amended documents, and more specifically amended General Conditions, must be able to handle licensing conditions based on the following variables:

Prepared by:	FIDIC Contract user Third party on behalf of a client
For:	One project Series of projects A maximum number of projects within the licence period
Project type:	Financed or managed by licensee Financed or managed by non-licensee
Distribution	Internal (use with organization or within closed group of organizations for say, a tender) Public
No. of contracts	Several Single
Languages	English only English plus one or more languages

### 3. Types of request

	<u>Fee</u>	<u>Period years</u>
Firm preparing one bespoke English GCs for a single project on behalf of a client	Euro 920	1
Firm preparing amended contracts for several clients	Based on estimated use	Negotiated
Organization preparing English amended GCs of several contracts for projects funded by the organization	Euro 920 per contract per project	1
Organization preparing English + one language amended GCs of several contracts for projects managed by the organization	Based on estimated use	Negotiated

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## 2.2. Types of licence

To summarise, the types of licences to prepare amended conditions of contract based on FIDIC General Conditions Contract are determined by:

- Licensee:  
project owner or a contract manager acting on behalf of an owner.
- Number of different amended conditions of contract prepared from a FIDIC contract's General Conditions.
- Licensing procedure:  
the licensee acquires a new licence for each new bespoke conditions or simply announces that a new bespoke conditions will be prepared.
- Number of projects per bespoke conditions:  
the amended conditions are sometimes for a single project; in other cases they are used for several projects or indeed as standard, organization-wide, conditions of contract for all of the licensee's projects in a certain field.
- FIDIC contract and languages:  
clearly licences may range from a licence for a single FIDIC contract in say English to a licence covering several FIDIC contracts and licences (if FIDIC has not published a translation in a particular language it can often arrange for or acquire the right to licence a translation).
- Duration:  
The duration of the licence agreement is specific to the licence agreement. This duration correspond to the period of time during which the final version of the amended conditions can be produced. It is not limiting the duration of use of the amended contract which will be valid during the entire life cycle of the concerned project.

## 2.3. Standard types of licences

The standard types of licence are where:

- A law firm or consulting engineer acquires a licence to prepare amended conditions for a single project (FIDIC negotiates a licence and issues an invoice for payment).
- A law firm or consulting engineer acquires a licence to prepare different amended conditions for different projects over a specified period of time, and only needs to announce to FIDIC that new conditions will be prepared (FIDIC negotiates a single, initial licence an issues and invoice for payment upon each announcement).
- An organisation acquires a licence to prepare and publish amended conditions of contract for use on projects funded in whole or part by the organisation. The single standard amended conditions of contract will generally be used organization-wide for up to a specified number of projects within a specified time (FIDIC negotiates a licence and issues an invoice for payment).

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### 3. Guidelines on when to issue a licence for amended General Conditions

#### 3.1. Preamble

Users of a FIDIC contract often want to prepare amended General Conditions instead of adopting unchanged General Conditions and introducing amendments in Particular Conditions.

FIDIC will question the need to modify General Conditions, which have been carefully drafted to ensure that there are no inconsistencies: modifying a General Condition clause can introduce ambiguities making a contract unworkable and discrediting FIDIC.

#### 3.2. Guidelines

In general, FIDIC will only consider issuing a licence to distribute a modified FIDIC publication, or part thereof, provided certain necessary conditions are met, namely:

- the need to modify is accepted;
- Terms of Use are adhered to;
- a licence agreement is concluded;
- a licence fee is agreed.

FIDIC normally does not manage a modified document on behalf of the licensee. However, in some cases FIDIC will remain the custodian of the amended General Conditions, releasing new versions following discussions with the licensee. These cases will be considered when:

- FIDIC has the expertise and competence to advise the licensee.
- The use of the bespoke General Conditions is significant.

In the specific case of contracts and agreements, FIDIC will grant a licence to prepare and distribute amended (“bespoke”) conditions of contract taken from FIDIC-published General Conditions of Contract provided that the amended conditions of contract:

- will be used routinely in a specific and relatively unique situation;
- in a specific and relatively unique situation;
- are based on detailed drafting by competent drafters;
- promote transparency, integrity and sound contract management, where the consolidation in bespoke conditions of contract of numerous amendments required for particular and specialised requirements, thus eliminating confusion;
- aim to simplify procedures.

### 4. The example of the MDB Harmonised Construction Contract

FIDIC conditions for licensing are exemplified by the case of the 10 multilateral development banks (MDB) that signed a licence agreement in 2005 to use the *FIDIC Construction Contract, 1<sup>st</sup> Edition, 1999*, as the basis for a MDB Harmonised Edition. Here, the banks had been using the FIDIC contract with several different and lengthy sets of Particular Conditions. By agreeing to licence bespoke MDB General Conditions, the banks were able to eliminate considerable confusion and simplify procedures. Normally, FIDIC does not manage a modified document on behalf of the licensee, so the only major difference with the MDB licence from a usual licence was that FIDIC remained the publisher of the MDB General Conditions, releasing new versions following discussions with participating banks.

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## 5. Cost

The cost of a licence is determined by scope and anticipated use. As an indication, a licence to prepare amended conditions based on a FIDIC contract for major works (e.g., the *FIDIC Construction Contract*) for a single project costs Euro 920. All other licences are based on a multiple of this amount.

## 6. Licensing procedure

The procedure for licensing a FIDIC document for amendment is straightforward. Users wishing to acquire a licence are asked to contact FIDIC, indicating:

- the FIDIC document concerned, e.g., the General Conditions of Contract that would be used as the basis for amended contract conditions;
- the special and exceptional reasons why amended conditions are preferred;
- the number of projects;
- duration, if more than one project.

FIDIC will examine the request, usually discussing the requirements with the potential licensee. If it is agreed to issue a licence, FIDIC will generally send a standard one-page letter agreement) for signature.

Upon receipt of the signed agreement, FIDIC issues an invoice for payment, returns a countersigned copy of the agreement and releases the relevant General Conditions as an unformatted Word file in a simple table format (together with the complete document as a watermarked PDF files with forms as editable annexes).

It should be noted that any licence agreement issued by FIDIC to amend General Conditions of contract will contain the following important provisions:

- Amended General Conditions must contain the original text highlighted and distinguishable from text that is added or amended.
- FIDIC reserves the right to receive a copy of the amended General Conditions, with any confidential information removed.
- FIDIC will not comment on or validate amendments. However, separate to any licence agreement, the federation will consider making an offer to comment upon the final amended General Conditions.

Geneva, 07 June 2013

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