



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Introduction to Standard of Care

FIDIC Briefing note



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Standard of care

Consulting Engineers have a contractual duty of care to their clients; that is, they are required to exercise a “standard of care”. The standard of care is a level of reasonable, skill, care and diligence, in other words the standard of care should be that of the ordinary skilled man exercising and professing to have that special skill. Consulting Engineers should make note that Clients may want to refine the contractual standard of care by imposing a higher standard of care requirement, such as a fitness for purpose obligation. Consulting Engineers should be conscious of accepting any absolute obligations, FIDIC recommends that Consulting Engineers carefully read the scope of services to ensure that a higher standard of care obligation is not accepted.

Scope of services

Consulting Engineers are regularly required to perform their services on the basis of information provided by the Client. Appointments frequently place obligations on Consulting Engineers to review such information and advise the Client of any errors, omissions, or ambiguities. Consulting Engineers should review the wording in their appointment to ensure that there is link between the standard of care required to the standard that would be expected of a consultant experienced in performing the same services. Consulting Engineers must also ensure that they are not exceeding the scope of services, or at least if the Consulting Engineer does undertake other tasks in the course of a project, they are aware of the risks of doing so. The primary duties, including the standard of care, and the nature and extent of those duties in carrying out the services should be set out in the appointment and detailed within the scope of services.

Compliance WITH standards

Consulting Engineers should have working knowledge of the standards applicable to their appointments and comply with any guidelines published by relevant professional institutions. Consulting Engineers should also consider whether the standard of care applies to all, or only some, of the duties and obligations under their appointment.

Fitness for purpose

In some circumstances, Consulting Engineers may be required to meet a standard of fitness for purpose in performing their duties and obligations. FIDIC notes that Consulting Engineers are not recommended to accept fitness for purpose obligations as these are considered higher standards than the level of reasonable, skill, care and diligence. Where such provisions are accepted, FIDIC recommends Consulting Engineers check with their insurance providers and confirm that their insurances can be extended to cover the fitness for purpose obligation; otherwise, the Consulting Engineer risks that if a claim is made against it in respect of the obligation, it will not have recourse to its insurance.

Risk

Consulting Engineers should always assess their risk under an appointment and limit their liability to that risk. Review of the limitation of liability clause is necessary to make certain that the liability is broad enough to incorporate the full scope of the services; this is a necessary component of the Consulting Engineer’s risk management strategy.

Insurances

The Appointment between the parties should record the nature of insurances necessary for the Consulting Engineer to be able to indemnify the Client and any third parties against failure to

discharge responsibilities. The Consulting Engineer has a responsibility to (i) set the balance in the Appointment to avoid exceeding the insurable limits of liability and (ii) ensure that the liability is limited to the available insurance taken out under the Appointment. FIDIC recommends that Consulting Engineers review the exclusions and restrictions of all insurance policies to ensure that the limits of liability are compatible with the insurance coverage.

FIDIC recommends:

1. The Client and the Consulting Engineer should document their Appointment for the provisions of services, modelled on the FIDIC Client/Consultant Model Services Agreement (the “White Book”), with reference to the accompanying Guide to the use of that document.
 2. The Appointment should clearly define, amongst other things:
 - a. the scope of service to be provided by the Consulting Engineer,
 - b. the responsibilities and risks to be borne respectively by both the Client and the Consulting Engineer; and
 - c. the nature and maximum amount of insurances upon the failure of either party to the other in carrying out their respective responsibilities.
 3. The limit of liability should be capped to the amount of the insurance cover taken out by the Consulting Engineer.
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About FIDIC



FIDIC, the International Federation of Consulting Engineers, is the global representative body for national associations of consulting engineers and represents over one million engineering professionals and 40,000 firms in more than 100 countries worldwide.

Founded in 1913, FIDIC is charged with promoting and implementing the consulting engineering industry's strategic goals on behalf of its Member Associations and to disseminate information and resources of interest to its members. Today, FIDIC membership covers over 100 countries of the world.

FIDIC Member Associations operate in over 100 countries with a combined population in excess of 6.5bn people and a combined GDP in excess of \$30tn. The global industry including construction is estimated to be worth over \$22tn this means that FIDIC member associations across the various countries are an industry are worth over \$8.5tn.



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Endnotes