

FIDIC Construction Contract

MDB Harmonised Edition

Version June 2010

Changes to the March 2006 Version

1.1.3.1	“Base Date” means the date 28 days prior to the latest date for submission <del>and completion</del> of the Tender.	Delete “and completion”.
1.1.3.7	“Defects Notification Period” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over <del>twelve months</del> <u>365 days</u> except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].	Change “twelve months” to “365 days”.
1.1.6.10	“Notice of Dissatisfaction” means the notice given by either Party to the other <u>under Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] indicating its dissatisfaction and intention to commence arbitration.</u>	New Definition.
1.5	Priority of Documents	
(c)	the <u>Letter of Tender</u> ,	Add “Letter of”.
2.4	Employer’s Financial Arrangements	
Para. 2	In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in <del>such</del> <u>his</u> notice of the extent to which such funds will be available.	Change “such” to “his”.
3.1	Engineer’s Duties and Authority	
(b)	the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; <del>and</del>	Delete “and”.
(c)	any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; <u>and</u>	Add “and”
(d)	<u>any</u> act by the Engineer in response to a Contractor’s request except <u>as</u> otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.	Change “Any” to “any” and insert “as”

4.2	Performance Security	
Para. 1	The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount <u>stated in the Contract Data and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer</u> . If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.	Change” and currencies stated in the Contract Data. “ to “stated in the Contract Data and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer”
Para. 2	The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by <u>a reputable bank or financial institution selected by the Contractor</u> , and shall be in the form annexed to the Particular Conditions, <u>as stipulated by the Employer in the Contract Data</u> , or in another form approved by the Employer.	Change “an entity and from within a country (or other jurisdiction) approved by the Employer,” to “a reputable bank or financial institution selected by the Contractor,” Add “as stipulated by the Employer in the Contract Data,”
4.13	Rights of Way and Facilities	
Para. 1	Unless otherwise specified in the Contract the Employer shall provide <u>effective</u> access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.	Add “effective”.
6.7	Health and Safety	
Para. 5	The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and <del>Consultants' employees</del> <u>any other Contractor's or Employer's personnel</u> employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.	Change “Consultant's employees” to any other Contractor's or Employer's personnel”.
6.15	Measures against Insect and Pest Nuisance	
	The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce <del>their danger to health</del> <u>the danger to their health</u> . The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.	Change “their danger to health” to the danger to their”.

6.20	<u>Forced Labour</u>	Changed from: “Prohibition of Forced or Compulsory Labour”
	<u>The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.</u>	Changed form: “The Contractor shall not employ “forced or compulsory labour” in any form. “Forced or compulsory labour” consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.”
6.21	<u>Child Labour</u>	Changed from: “Prohibition of Harmful Child Labour”.
	<u>The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.</u>	The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.
6.22	<u>Employment Records of Workers</u>	
	The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer, <u>and these records shall be available for inspection by Auditors during normal working hours.</u> These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor’s Personnel and Equipment].	Delete “, and these records shall be available for inspection by Auditors during normal working hours.”
6.23	<u>Workers’ Organisations</u>	
	<u>In countries where the relevant labour laws recognise workers’ rights to form and to join workers’ organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers’ organisations, the Contractor shall enable alternative means for the Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor’s Personnel from forming or joining workers’ organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers’ representatives. Workers’ organisations are expected to fairly represent the workers in the workforce.</u>	New Sub-Clause

6.24	<u>Non-Discrimination and Equal Opportunity</u>	
	<u>The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.</u>	New Sub-Clause.
7.7	Ownership of Plant and Materials	
	Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:	Add "as".
8.1	Commencement of Works	
Para. 1	Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's <del>instruction</del> <u>notification</u> recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:	Insert "as" and change "instruction" to "notification".
(c)	except if otherwise specified in the Contract Data, <u>effective access to</u> and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works;	Add "effective access to"
12.3	Evaluation	
Para. 6	Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned <del>Works</del> <u>work</u> commences.	Change "Works" to "work".
14.1	The Contract Price	
	<del>(e)</del> Notwithstanding the provisions of sub-paragraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.	Delete tabulation "(e)"
14.2	Advance Payment	

Para 3.	The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by <u>a reputable bank or financial institution selected by the Contractor</u> and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.	Change “an entity and from within a country (or other jurisdiction) approved by the Employer” to “a reputable bank or financial institution selected by the Contractor”.
Para. 6	If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], <u>except for Sub-Clause 15.5 [Employer’s Entitlement to Termination for Convenience]</u> , payable by the Contractor to the Employer.	Change and Sub-clause 19.6 [ Optional Termination, Payment and Release ],” to “except for Sub-Clause 15.5 [Employer’s Entitlement to Termination for Convenience],”
14.3	<b>Application for Interim Payment Certificates</b>	
(d)	any amounts to be added for the advance payment <del>and</del> (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];	Delete “and”.
14.9	<b>Payment of Retention Money</b>	
Para. 5	Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and <u>issued by a reputable bank or financial institution selected by the Contractor</u> , for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.	Change “provided by an entity approved by the Employer,” to “issued by a reputable bank or financial institution selected by the Contractor,”
15.6	<b>Corrupt or Fraudulent Practices</b>	
Para. 1	If the Employer determines, <u>based on reasonable evidence</u> , that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, <del>terminate the Contractor’s employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such <u>expulsion termination</u> had been made under Sub-Clause 15.2 [Termination by Employer].</del>	Add “, based on reasonable evidence, “. Delete “the Contractor’s employment under “. Change “expulsion” to “termination”.
Para. 2	Should any employee of the Contractor be determined, <u>based on reasonable evidence</u> , to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor’s Personnel].	Add “, based on reasonable evidence, “.

	[For contracts financed by the Asian Development Bank]	See General Conditions of Contract.
	[For contracts financed by the Caribbean Development Bank]	
	[For contracts financed by the European Bank for Reconstruction and Development]	
	[For contracts financed by the Inter-American Development Bank]	
	[For contracts financed by the World Bank]	
16.2	Termination by Contractor	
(f)	a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or	Delete “or”.
(g)	the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or <u>events</u> .	Replace “.” with “,”
(h)	<u>the Contractor does not receive the Engineer’s instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].</u>	Change (i) to “h) and replace “The” by “the”.
Para. 3	<u>In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor’s entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.</u>	Replaces: “In any of these events or circumstances, the Contractor may, upon giving 14 days’ notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.  The Contractor’s election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.”
19.4	Consequences of Force Majeure	
(b)	if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or <del>destroyed</del> <u>destroyed</u> by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor’s Equipment].	Changing “destroyed” to “destroyed”.
20.1	Contractor’s Claims	

Para. 8	Each Payment Certificate shall include such additional payment for any claim as <del>has have</del> been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.	Change "have" to "has".
20.4	Obtaining Dispute Board's Decision	
Para. 5	If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a <u>Notice of Dissatisfaction</u> to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a <u>Notice of Dissatisfaction</u> to the other Party.	Change "notice" to "Notice of Dissatisfaction".
Para. 6	In either event, this <u>Notice of Dissatisfaction</u> shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a <u>Notice of Dissatisfaction</u> has been given in accordance with this Sub-Clause.	Change "notice of dissatisfaction" to "Notice of Dissatisfaction".
20.5	Amicable Settlement	
Para. 1	Where a <u>Notice of Dissatisfaction</u> has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, <u>the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration</u> after the fifty-sixth day from the day on which a <u>Notice of Dissatisfaction</u> was given, even if no attempt at an amicable settlement has been made.	Change "notice of dissatisfaction" to "Notice of Dissatisfaction".  Change "arbitration may be commenced on or" to "the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration".
20.6	Arbitration	
Para. 1	<u>Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:</u>	Change from: "Unless indicated otherwise in the Particular Conditions, any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:"
(a)	<u>if the Contract</u> is with foreign contractors,	Change" for contracts" to "if the Contract".
	(i) <u>for contracts financed by all participating Banks except under subparagraph (a) (2) below:</u>	

	<u>international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.</u>	Change from: "international arbitration with proceedings administered by the institution appointed in the Contract Data conducted in accordance with the rules of arbitration of the appointed institution, if any, or in accordance with UNCITRAL arbitration rules, at the choice of the appointed institution,"
	(ii) <u>for contracts financed by the Asian Development Bank:</u>	
	<u>international arbitration (1) with proceedings administered by the arbitration institution specified in the Contract Data and conducted under the rules of arbitration of such institution unless it is specified in the Contract Data that the arbitration shall be conducted under the rules of the United Nations Commission on International Trade Law (UNCITRAL) and if UNCITRAL Rules are so specified then the named arbitration institution shall be the appointing authority and shall administer the arbitration); or (2) if an arbitration institution is not specified in the Contract Data, with proceedings administered by the Singapore International Arbitration Centre (SIAC) and conducted under the SIAC Rules, by one or more arbitrators appointed in accordance with the said arbitration rules.</u>	New para.
(b)	if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.	Change" for contracts" to "if the Contract". Change : "(d) " to"(b)
Para. 2	<u>The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].</u>	Change from: "the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located,"
Para. 3	Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its <u>Notice of Dissatisfaction</u> . Any decision of the DB shall be admissible in evidence in the arbitration.	Change "notice of dissatisfaction" to "Notice of Dissatisfaction".
	<b>ANNEX: General Conditions of Dispute Board Agreement</b>	
	Section 6(a)(i) , 6(b)(i) and Section 6, Para. 4	Change "site" to Site".
	<b>PROCEDURAL RULES</b>	
	Sections, 1, 2 and 3	Change "site" to Site".