
FIDIC의 구성 및 이해

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1. 대표적 국제표준계약으로서의 FIDIC (International Standard Forms of Contract)

1) 표준계약서의 이해 (What is Standard Forms of Contract ?)

- 발주자의 입장에서 보면,
 - 계약할 때마다
 - 업자를 상대로
 - 내용 및 조건을
 - 협상하고 협의하는 것이 번거롭다
- 그래서 발주자는
 - 계약 내용 및 조건을 정형화(定型化)하여
 - 동종 공사를 체결하고자 할 때 사용
- 정형화된 계약체결방식은 일상생활에도 흔히 볼 수 있음
 - 예를 들면,
 - 주택을 매매하고자 할 때 복덕방의 미리 인쇄된 계약서
 - 자동차보험에 가입할 때 받아보는 계약 등이 있다.
 - 이렇게 정형화(定型化)된 계약서를 표준계약서(Standard Forms of Contract)라 함.
 - 국제건설공사의 계약일반조건들도 지난 수십년동안 FIDIC 등 기관에 의해서 개발되었음

Standard forms of construction contract can be traced back into the nineteenth century when most major building projects were undertaken by public authorities. These early forms of contract tended to be drafted by lawyers following a format which would now be seen as unduly harsh towards contractors. In the twentieth century standard forms were developed by a number of professional bodies, notably the RIBA and the ICE and during the past few decades many other institutions have developed their own forms: including FIDIC.

(표준건설계약서는 19세기부터 보급되었는데 이 시기에는 대부분의 공사가 공공발주였으며 계약서 내용이 시공자에 매우 불리하였음.
20세기에 들어와서 RIBA(영국왕립건축학회) 및 ICE(영국토목학회) 중심으로 개발되었으며 최근 수십년간 FIDIC(국제컨설팅엔지니어링연맹)을 포함한 여러기관에서 개발시켜왔음)

2) 국제표준계약서 사용의 이점 (Advantages)

- Savings in time and cost
- Less misunderstanding and fewer disputes
- Generally recognized as being fair

3) 국제표준계약 개발 기관 (Some International Standard Forms of Contract)

- FIDIC (International Federation of Consulting Engineers)
- ICE (Institution of Civil Engineers, U.K)
- JCT (Joint Contractors Tribunal, U.K)
- RIBA (Royal Institute of British Architects)
- AIA (American Institute of Architects)

2. FIDIC의 개요 및 주요 기능

1) Introduction to FIDIC

FIDIC : Federation Internationale Des Ingerieurs-Conseils [International Federation of Consulting Engineers, 국제 컨설팅 엔지니어 연맹]

설립 : 1913년 → 영국의 ICE(Institute of Civil Engineers)가 모태

Location : World Trade Center, Geneva, Switzerland

FIDIC 계약조건의 활용 현황

- 국제적으로 가장 인지도가 높은 계약조건
- 세계 60여개국에서 FIDIC 계약조건을 국제표준계약서로 사용하고 있음.
- 건설 발주를 자주 관장하는 주요 국제기관(세계은행(WB : World Bank)과 아시아개발은행(ADB : Asian Development Bank) 등)에서도 FIDIC을 국제표준계약조건으로 사용하고 있음.

2) FIDIC's Main Activities

Organises

- Extensive programme of seminars and conferences.
- International Training Programme (courses; workshops)
- Capacity Development Programme (accredited trainers; training suppliers; programmes and events).

Publishes

- Business practice guides
- Professional services agreements and guides
- Works contracts and guides

3) FIDIC's Standard Forms of Contract

1999 FIDIC Edition of the FIDIC Suite of Contracts

- **Construction Contract designed by the Employer** **Red Book**
(Contractor is paid on a re-measurement basis for constructing works designed by Others)
- **Plant and Design-Build designed by the Contractors** **Yellow Book**
(Contractor is paid on a lump sum basis for providing works to his own design)
- **EPC/Turnkey** **Silver Book**
(Contractor is paid on a lump sum basis for providing works his own design)
- **1999 Short Form of Contract** **Green Book**

Other Additional Forms of Contract

- **2006 Client/Consultant Model Services Agreement (4th Edition)** **White Book**
- **2008 First Edition of the Design, Build and Operate Projects** **Gold Book**
- **2009 Test Edition of the Conditions, of Contract for Subcontracting** **Red Book**
- **2006/2010 MDB Version** **Pink Book**

3. FIDIC 건설공사 표준계약 (FIDIC Works Contract)

1) Red Book, Yellow Book, Silver Book의 비교 (General Conditions of Contract : GCC)

Con's (Red Book)	P&DB (Yellow Book)	EPCT (Silver Book)
① General Provisions	① General Provisions	① General Provisions
② Employer	② Employer	② Employer
③ <u>Engineer</u>	③ <u>Engineer</u>	③ <u>Employer's Administration</u>
④ Contractor	④ Contractor	④ Contractor
⑤ <u>Nominated Subcontractors</u>	⑤ <u>Design</u>	⑤ <u>Design</u>
⑥ Staff and Labour	⑥ Staff and Labour	⑥ Staff and Labour
⑦ Plant, Materials and Workmanship	⑦ Plant, Materials and Workmanship	⑦ Plant, Materials and Workmanship
⑧ Commencement, Delays and Suspension	⑧ Commencement, Delays and Suspension	⑧ Commencement, Delays and Suspension
⑨ Tests on Completion	⑨ Tests on Completion	⑨ Tests on Completion
⑩ Employer's Taking Over	⑩ Employer's Taking Over	⑩ Employer's Taking Over
⑪ Defects Liability	⑪ Defects Liability	⑪ Defects Liability
⑫ <u>Measurement and Evaluation</u>	⑫ <u>Tests after Completion</u>	⑫ <u>Tests after Completion</u>
⑬ Variations and Adjustments	⑬ Variations and Adjustments	⑬ Variations and Adjustments
⑭ Contract Price and Payment	⑭ Contract Price and Payment	⑭ Contract Price and Payment
⑮ Termination by Employer	⑮ Termination by Employer	⑮ Termination by Employer
⑯ Suspension and Termination by Contractor	⑯ Suspension and Termination by Contractor	⑯ Suspension and Termination by Contractor
⑰ Risk and Responsibility	⑰ Risk and Responsibility	⑰ Risk and Responsibility
⑱ Insurance	⑱ Insurance	⑱ Insurance
⑲ Force Majeure	⑲ Force Majeure	⑲ Force Majeure
⑳ Claims, Disputes and Arbitration	㉑ Claims, Disputes and Arbitration	㉑ Claims, Disputes and Arbitration

2) Particular Conditions (계약특수조건)

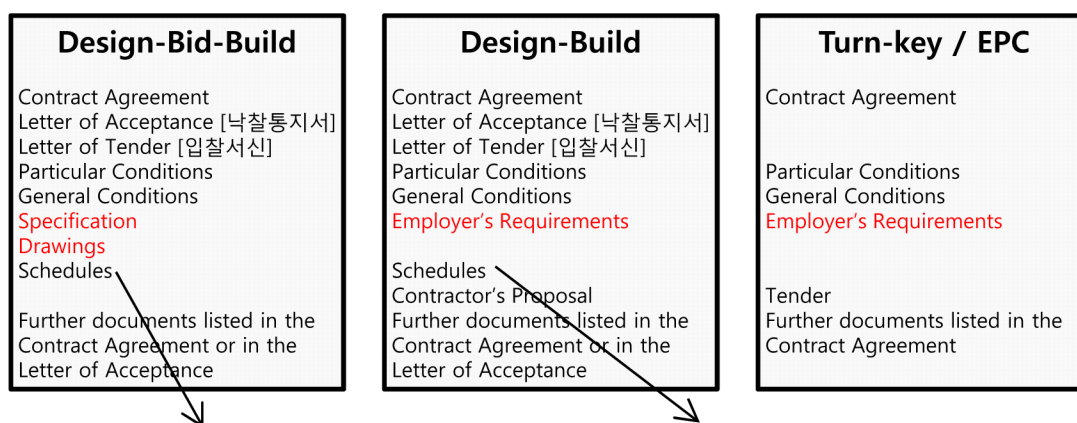
① References from Clauses in the General Conditions

- 일반조건에 특정할 수 없는 정의, 수치, 요율 등을 특수조건에서 구체화 (부분준공기한, 이행보증금액, 선급금 상환비율 등)

② Additional Clauses

- The parties are to include in this section any variations, omissions and additions to the General Conditions
- Ex : Clause 16. Suspension and Termination by the Contractor
16.1 : Contractor's Entitlement to Suspend Work.
"At the end of the first paragraph of Sub-Clause 16.1, replace "21 days" with "56 days""

3) FIDIC Contract Document의 구성



1.1.1.7 "Schedules" means the documents(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.7 "Schedules" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include data, lists, and schedules of payments and/or prices.

4) FIDIC RED BOOK

Construction Contract: Conditions of Contract for Construction
FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER
First Edition; 1999

1 GENERAL PROVISIONS

- 1.1 Definitions
- 1.4 Law and Language
- 1.5 Priority of Documents
- 1.9 Delayed Drawings or Instructions
- 1.13 Compliance with Laws
- 1.14 Joint and Several Liability

2 THE EMPLOYER

- 2.1 Right of Access to the Site
- 2.2 Permits, Licences or Approvals
- 2.4 Employer's Financial Arrangements
- 2.5 Employer's Claims

3 THE ENGINEER

- 3.1 Engineer's Duties and Authority
- 3.2 Delegation by the Engineer
- 3.3 Instructions of the Engineer
- 3.4 Replacement of the Engineer
- 3.5 Determinations

4 THE CONTRACTOR

- 4.1 Contractor's General Obligations
- 4.2 Performance Security

- 4.7 Setting Out
- 4.9 Quality Assurance
- 4.12 Unforeseeable Physical Conditions
- 4.17 Contractor's Equipment
- 4.18 Protection of the Environment
- 4.19 Electricity, Water and Gas
- 4.20 Employer's Equipment and Free-Issue Material
- 4.21 Progress Reports
- 4.24 Fossils

5 NOMINATED SUBCONTRACTORS

- 5.1 Definition of "nominated Subcontractor"
- 5.2 Objection to Nomination
- 5.3 Payments to nominated Subcontractors

6 STAFF AND LABOUR

- 6.1 Engagement of Staff and Labour
- 6.2 Rates of Wages and Conditions of Labour
- 6.4 Labour Laws
- 6.5 Working Hours
- 6.6 Facilities for Staff and Labour
- 6.7 Health and Safety

7 PLANT, MATERIALS AND WORKMANSHIP

- 7.1 Manner of Execution
- 7.2 Samples
- 7.3 Inspection
- 7.4 Testing
- 7.5 Rejection
- 7.6 Remedial Work

8 COMMENCEMENT, DELAYS AND SUSPENSION

- 8.1 Commencement of Works
- 8.2 Time for Completion
- 8.3 Programme
- 8.4 Extension of Time for Completion
- 8.5 Delays Caused by Authorities
- 8.6 Rate of Progress
- 8.7 Delay Damages
- 8.8 Suspension of Work

9 TESTS ON COMPLETION

- 9.1 Contractor's Obligations
- 9.2 Delayed Test
- 9.3 Retesting
- 9.4 Failure to Pass Tests on Completion

10 EMPLOYER'S TAKING OVER

- 10.1 Taking Over of the Works and Sections
- 10.2 Taking Over of Parts of the Works

11 DEFECTS LIABILITY

- 11.1 Completion of Outstanding Work and Remedying Defects
- 11.2 Cost of Remedying Defects
- 11.3 Extension of Defects Notification Period
- 11.4 Failure to Remedy Defects
- 11.8 Contractor to Search
- 11.9 Performance Certificate

12 MEASUREMENT AND EVALUATION

- 12.1 Works to be Measured
- 12.2 Method of Measurement
- 12.3 Evaluation
- 12.4 Omissions

13 VARIATIONS AND ADJUSTMENTS

- 13.1 Right to Vary
- 13.3 Variation Procedure
- 13.5 Provisional Sums
- 13.6 Daywork
- 13.7 Adjustments for Changes in Legislation
- 13.8 Adjustments for Changes in Cost

14 CONTRACT PRICE AND PAYMENT

- 14.1 The Contract Price
- 14.2 Advance Payment
- 14.3 Application for Interim Payment Certificates
- 14.6 Issue of Interim Payment Certificates
- 14.8 Delayed Payment
- 14.9 Payment of Retention Money
- 14.11 Application for Final Payment Certificate
- 14.12 Discharge
- 14.13 Issue of Final Payment Certificate

15 TERMINATION BY EMPLOYER

- 15.1 Notice to Correct
- 15.2 Termination by Employer
- 15.3 Valuation at Date of Termination
- 15.5 Employer's Entitlement to Termination

16 SUSPENSION AND TERMINATION BY CONTRACTOR

17 RISK AND RESPONSIBILITY

17.2 Contractor's Care of the Works

17.3 Employer's Risks

17.4 Consequences of Employer's Risks

18 INSURANCE

18.1 General Requirements for Insurances

18.2 Insurance for Works and Contractor's Equipment

18.3 Insurance against Injury to Persons and Damage to Property

18.4 Insurance for Workers

19 FORCE MAJEURE

19.1 Definition of Force Majeure

19.2 Notice of Force Majeure

19.5 Consequences of Force Majeure

20 CLAIMS, DISPUTES AND ARBITRATION

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Major Clauses

Clause 3. Engineer

Clause 13. Variations and Adjustments

Clause 14. Contract Price and Payment

Clause 20. Claim, Disputes and Arbitration

Clause 3. Engineer

3.1 Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; 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.

3.2 Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties.

However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [*Determinations*].

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of

the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [*Variations and Adjustments*] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract, Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 42 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. The Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer, with supporting particulars.

3.5 Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavor to reach agreement. If

agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice both Parties of each agreement of determination, with supporting particulars. Each party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

Clause 13. Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required for the Variation. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Work, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal

which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared and the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [*Variation Procedure*].

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) the Contractor shall design this part,
- (b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [*Contractor's General Obligations*] shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half(50%) of the difference between the following amounts:
 - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub Clause 13.7 [*Adjustments for Change in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*], and
 - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee

13.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving

reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [*programme*] and to the Time for Completion, and
- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [*Measurement and Evaluation*], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance

with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [*Variation Procedure*]; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined on Clause 5 [*Nominated Subcontractors*]) or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Appendix to Tender shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Daywork

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a day work basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (b) the names, occupations and time of Contractor's Personnel,
- (c) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (d) the quantities and types of Plant and Materials used.

One Copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Application for Interim Payment Certificates*].

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions :

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [*Evaluation*] and be subject to adjustments in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*];
- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - (i) of the Works which the Contractor is required to execute, or
 - (ii) for the purposes of Clause 12 [*Measurement and Evaluation*]; and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Appendix to Tender.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Appendix to Tender, this Sub-Clause shall not

apply.

The Engineer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under Sub-Clause 13.3 [*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 an entity and from within a country (or other jurisdiction) approved by the Employer and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

The advance payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Appendix to Tender.

- (a) deductions shall commence in the Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds ten percent (10%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortization rate of one quarter (25%) of the amount of each Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.

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 payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [*Progress Reports*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraph (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the amounts so retained by the Employer reaches the limit of Retention Money (if any) stated in the Appendix to Tender;
- (d) any amounts to be added and deducted for the advance payment and repayment in accordance with Sub-Clause 14.2 [*Advance Payment*];
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [*Plant and Materials intended for the Works*];
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims, Disputes*]

- and Arbitration*]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*];
- (b) Sub-Clauses 14.5 [*Plant and Materials intended for the Works*] shall not apply; and
- (c) If these instalments are not defined by reference to the actual progress achieved in executing the based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Appendix to Tender, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

(a) the Contractor has:

- (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
- (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

- (i) are those listed in the Appendix to Tender for payment when shipped,
- (ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and
- (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued and entity approved by the Employer in amounts and currencies equal to the amounts due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [*Advance Payment*] and shall be valid until the Plant and Materials are properly stored on Site protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

- (i) are those listed on the Appendix to Tender for payment when delivered to the Site, and

- (ii) have been delivered to and are properly stored on the Site, protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eight percent of the Engineer's determination of the cost the Plant and Materials (including delivery to site), taking account of the documents mentioned this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificate

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with supporting particulars.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificate (if any) stated in the Appendix to Tender. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although;

- (a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be

- withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and has been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

14.7 Payment

The Employer shall pay to the Contractor.

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [*Performance Security*] and Sub-Clause 14.2 [*Advance Payment*], whichever is later,
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [*Payment*], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [*Payment*], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be two-fifth (40%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be two-fifths (40%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [*Defects Liability*], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [*Adjustments for Charges in Legislation*] and Sub-Clause 13.8 [*Adjustments for Changes in Cost*].

14.10 Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payment Certificates*], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*].

14.11 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer.

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes

evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] or Sub-Clause 20.5 [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state:

- (a) the amount which is finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certification in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it.

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the Currency or currencies named in the Appendix to Tender. Unless otherwise stated in the Particular Conditions, if more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Appendix to Tender, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [*Provisional Sums*] and Sub-Clause 13.7 [*Adjustments for Changes in Legislation*] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraph (a) to (d) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Appendix to Tender shall be

made in the currencies and proportions specified in the Appendix to Tender;

- (c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Appendix to Tender, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

Clause 20. Claim, Disputes and Arbitration

20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or

circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have 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.

The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.2 Appointment of the Dispute Adjudication Board

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date stated in the Appendix to Tender.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member ("adjudicator") or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DAB for it to give its opinion. Neither Party shall consult the DAB on any matter without the agreement of the other Party.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace (or to be available to replace) any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment.

If any of these circumstances occurs and no such replacement is available, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [*Discharge*] shall have become effective.

20.3 Failure to Agree Dispute Adjudication Board

If any of the Following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DAB by the date stated in the first paragraph of Sub-Clause 20.2,
- (b) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official named in the Appendix to Tender shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all such additional information, further access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Part is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB 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 notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in disputer and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Adjudication Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute*

Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter on dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5 Amicable Settlement

Where notice of dissatisfaction 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, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 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 both 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 for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) 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 arbitrator(s) on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) 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.

20.7 Failure to Comply with Dispute Adjudication Board's Decision

In the event that:

- (a) neither Party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*],
- (b) the DAB's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*]. Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.

20.8 Expiry of Dispute Adjudication Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:

- (a) Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply, and
- (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [*Arbitration*].

5) FIDIC White Book

(1) Name of Document :

Client/Consultant Model Services Agreement, 4th Edition
(FIDIC 표준기술용역계약서 개정 4판, 2006)

(2) White Book의 구성

- ① **Agreement** (계약합의서)
- ② **Part I** : 계약일반조건 (General Conditions)
- ③ **Part II** : 계약특수조건 (Conditions of Particular Application)
 - A항 : 계약일반조건에서 유보한 사항을 약정 (References from Clauses in Part I)
 - B항 : 추가조항 기재 (Additional Clauses ; joint venture, PM의 권한 및 손해배상청구액(Liquidated damages) 등의 사항)
- ④ **Appendix 1** : 업무범위 (Scope of Services)
- ⑤ **Appendix 2** : 발주자가 제공하는 인력, 장비 및 제3자의 용역 (Personnel, Equipment, Facilities and Service of Others to be Provided by the Client)
- ⑥ **Appendix 3** : 대가의 산정 및 지급 (Remuneration and Payment)
- ⑦ **Appendix 4** : 업무 일정표 (Time Schedule for Services)

(3) General Conditions (계약일반조건)

1조	GENERAL PROVISION	(일반규정 : 총칙)
2조	THE CLIENT	(용역발주자)
3조	THE CONSULTANT	(용역계약자)
4조	COMMENCEMENT, COMPLETION, VARIATION AND TERMINATION	(용역의 착수, 완료, 변경 및 해지)
5조	PAYMENT	(대가의 지급)
6조	LIABILITIES	(계약당사자간의 책임)
7조	INSURANCE	(보험)
8조	DISPUTES AND ARBITRATION	(분쟁 및 중재)

(4) Types of Services (용역의 유형)

Given the variety of main project phases, a variety of consulting services arises. The main categories of professional services for civil engineering works (White Book Guide) are :

- inception of the project : preliminary studies; surveys, etc.
- feasibility analysis
- detailed engineering design
- tender documentation : preparing, etc. tenders
- implementation : supervision; project management
- operational : management; maintenance, training

(5) Method of Selection : Consulting/Engineering Firms (용역업자 선정 방법)

- Quality & Cost Based Selection (QCBS)

- 가장 보편적인 방법
- 기술제안서(Technical Proposal) / 가격제안서(Financial Proposal)의
동시 제출 - Two Envelopes
- TP : 80%, FT : 20%로 평가

- Quality Based Selection (QBS) : FIDIC 권장방법

- One Envelope → Technical Proposal
- 우선협상대상자(Highest TP)에게 FT 제출요청 후 협상

참 고 용역수행절차 (ADB의 경우)

- CMS (Consultant Management System)에 등록
- CSRN (Consultant Services Recruitment Notice) 점검
- EOI 제출
- Evaluation
- Shortlisting
- RFP 교부 (Shortlisted Firms)
- Proposal 제출
- Evaluation of the Proposal
- Awarding