

# CONSTRUCTION CLAIMS MANAGEMENT & EOT DELAYS ANALYSIS

## Contract Module Part (2)

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# **PART (2)**

## **FIDIC ( WHAT WE NEED TO KNOW )**

## Agenda

- **Introduction**
  - **Fidic Association**
  - **Fidic Rainbow**
- **Red Fidic Clauses Overview**
- **The Obligations of the Employer**
- **The Obligations of the Contractor**
- **The Obligations of the Engineer**
- **The Obligations of the Dispute Adjudication Board**

### Introduction

- **FIDIC is the International Federation of Consulting Engineers and its members are comprised of national associations of consulting engineers.**
- **Today, membership covers 99 countries of the World and since it's inauguration in 1913, the FIDIC standard forms of contract have become the international standard for contracts of an international nature and are widely used in developing countries that have not produced their own standard forms of contract.**

### **Fidic Rainbow**

- In 1999 FIDIC published a ‘suite’ of contracts, which became known as ‘the Rainbow Suite’ because of the various colors of the covers, these have been refined and developed in the intervening years and today the suite comprises the following contracts:
- It is all about **risk allocation** between the employer and the contractor.

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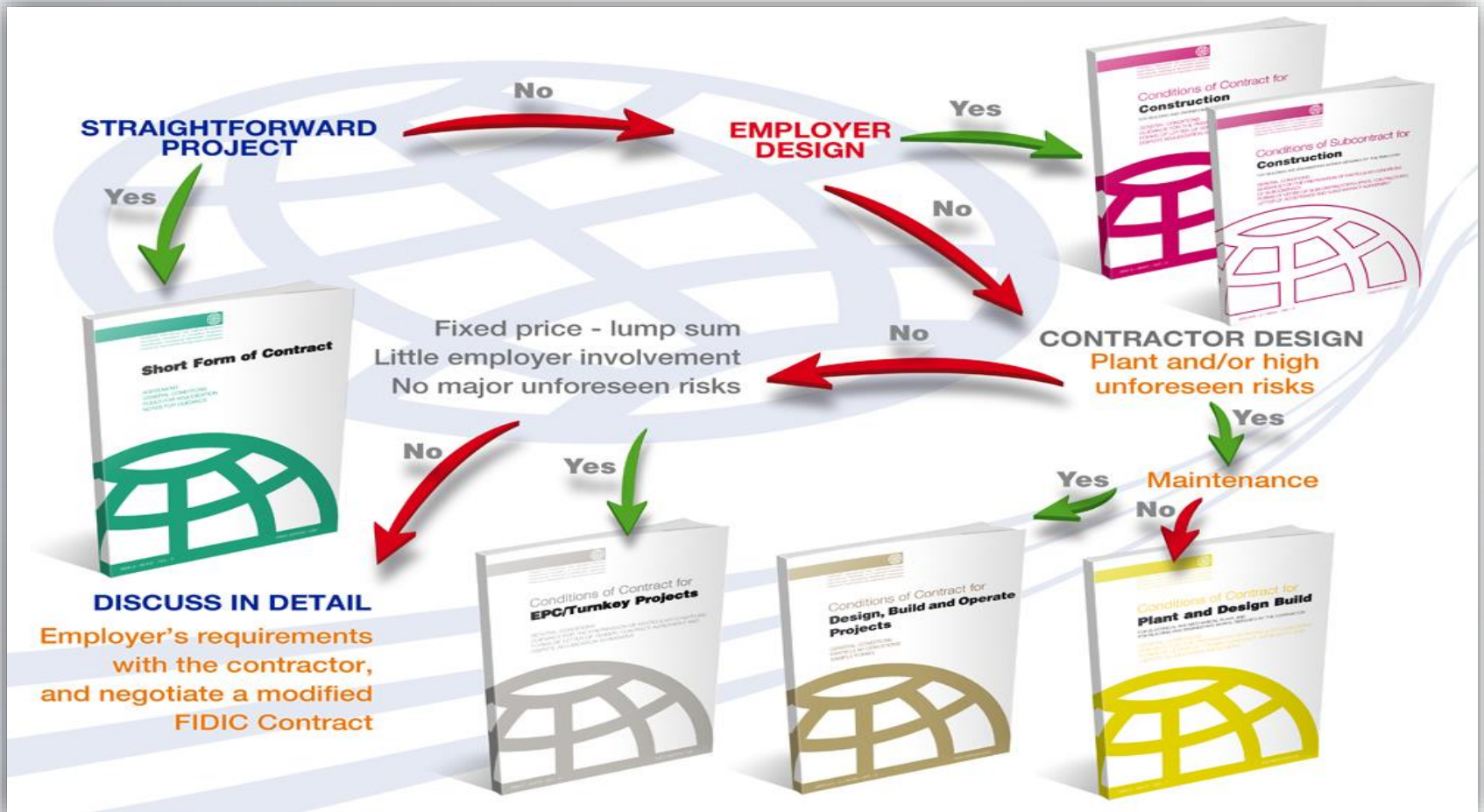
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## Fidic Rainbow

<b>Project Type</b>	<b>FIDIC Contract Form</b>
Straight forward, quick or cheap project“ <500,000 \$”	<b>Green Book</b>
Employer design (Traditional project)	<b>Red Book</b>
Employer design (Development Banks providing finance)	<b>Pink Book</b>
Contractor design (Traditional project)	<b>Yellow Book</b>
EPC/Turnkey project	<b>Silver Book</b>
Design, build, operate project	<b>Gold Book</b>

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## Fidic Rainbow



# Red Fidic – General Conditions Clauses

- ❑ Clauses : **20 Clause**
- ❑ Sub Clause : **193 Sub Clause**

Clause Number	Clause Title
Clause 1	GENERAL PROVISIONS
Clause 2	THE EMPLOYER
Clause 3	THE ENGINEER
Clause 4	THE CONTRACTOR
Clause 5	NOMINATED SUBCONTRACTORS
Clause 6	STAFF AND LABOUR
Clause 7	PLANT, MATERIALS AND WORKMANSHIP
Clause 8	COMMENCEMENT, DELAYS AND SUSPENSION



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# General Conditions Clauses – Cont''

Clause Number	Clause Title
Clause 9	TESTS ON COMPLETION
Clause 10	EMPLOYER'S TAKING OVER
Clause 11	DEFECTS LIABILITY
Clause 12	MEASUREMENT AND EVALUATION
Clause 13	VARIATIONS AND ADJUSTMENTS
Clause 14	CONTRACT PRICE AND PAYMENT
Clause 15	TERMINATION BY EMPLOYER
Clause 16	SUSPENSION AND TERMINATION BY CONTRACTOR
Clause 17	RISK AND RESPONSIBILITY
Clause 18	INSURANCE
Clause 19	FORCE MAJEURE
Clause 20	CLAIMS, DISPUTES AND ARBITRATION

# Obligations

- Obligations of the Employer**
- Obligations of the Contractor**
- Obligations of the Engineer**
- Obligations of the Dispute Adjudication Board**

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>1 General Provisions</b>			
<b>1.6 Contract Agreement</b>	Enter into a Contract Agreement with the Contractor.	Within 28 days after the Contractor receives the Letter of Acceptance, unless agreed otherwise.	None.
<b>1.8 Care and Supply of Documents</b>	a) Keep the Specification and Drawings in custody and care. b) Supply two copies of the Contract and of each subsequent Drawing to the Contractor. c) Give notice of errors or defects in any document prepared by the Contractor for use in executing the Works.	a) None. b) None. c) Promptly.	None.
<b>1.13 Compliance with Laws</b>	Obtain the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or being) obtained by the Employer.	None.	None.

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>2 The Employer</b>			
<b>2.1 Right of Access to the Site</b>	<ul style="list-style-type: none"> <li>a) Give the Contractor right of access to, and possession of, all parts of the Site.</li> <li>b) Give the Contractor possession of any foundation, structure, plant or means of access if required.</li> </ul>	<ul style="list-style-type: none"> <li>a) Within the time (or times) stated in the Appendix to Tender, or if not stated, to enable the Contractor to proceed in accordance with the programme submitted under Sub-Clause 8.3 [Programme].</li> <li>b) In the time and</li> </ul>	Contractor shall be entitled to an extension of time and payment of Cost plus reasonable profit.
<b>2.2 Permits, Licenses or Approvals</b>	<p>Provide reasonable assistance to the Contractor at the request of the Contractor:</p> <ul style="list-style-type: none"> <li>a) By obtaining copies of the Laws of the Country which are relevant but not readily available, and</li> <li>b) For the Contractor's applications for any permits, licences or approvals required by the Laws of the Country.</li> </ul>	None.	None.

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>2 The Employer</b>			
<b>2.3 Employer's Personnel</b>	Ensure that Employer's personnel and Employer's other contractors cooperate with the Contractor and take actions similar to those which the Contractor is required to take under Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].	None.	None.
<b>2.4 Employer's Financial Arrangements</b>	Submit reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price.	Within 28 days after receiving any request from the Contractor.	Contractor entitled to Suspend work, reduce the rate of work and to an extension of time and additional payment as a result of such actions (Sub-Clause 16.1).

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>2 The Employer</b>			
<b>2.5 Employer's Claims</b>	Give notice and particulars to the Contractor if the Employer considers himself to be entitled to any payment under any Clause of the Conditions or otherwise in connection with the Contract and/or to any extension of the Defects Notification Period (this obligation may be carried out by the Engineer).	As soon as practicable after becoming aware of the event or circumstances giving rise to the claim.	None.

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## The Obligations of the Engineer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>3 The Engineer</b>			
<b>3.1 Engineer's Duties and Authority</b>	<p>a) Appoint the Engineer to carry out the duties assigned to him in the Contract.</p> <p>b) Not to impose further constraints on the Engineer's authority, except as agreed with the Contractor..</p>	None.	None.
<b>3.4 Replacement of the Engineer</b>	<p>a) Give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer.</p> <p>b) Not to replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer with supporting particulars..</p>	<p>a) Not less than 42 days before the intended date of replacement.</p> <p>b) None.</p>	None.

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>4 The Contractor</b>			
<b>4.2 Performance Security</b>	<ul style="list-style-type: none"> <li>a) Cooperate with the Contractor to agree the entity, country (or other jurisdiction) for the issue of the Performance Security.</li> <li>b) Cooperate with the Contractor to agree the form of Performance Security if not in the form annexed to the Particular Conditions.</li> <li>c) Not to make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract (as listed).</li> <li>d) Return the Performance Security to the Contractor.</li> </ul>	<ul style="list-style-type: none"> <li>a) None.</li> <li>b) None.</li> <li>c) None.</li> <li>d) Within 21 days after receiving a copy of the Performance Certificate.</li> </ul>	None.
<b>4.10 Site Data</b>	<ul style="list-style-type: none"> <li>a) Make available to the Contractor all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects.</li> <li>b) Make available to the Contractor all such data which come into the Employer's possession after the Base Date.</li> </ul>	<ul style="list-style-type: none"> <li>a) Prior to the Base Date.</li> <li>b) None.</li> </ul>	None.



# Construction Claims Management ( Contract Module – Part 2 )

## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>4 The Contractor</b>			
<b>4.20 Employer's Equipment and Free-Issue Material</b>	<p>a) Make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification.</p> <p>b) Supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification.</p> <p>c) Rectify the notified shortage, defect or default in the free-issue materials.</p>	<p>a) As specified in the Contract.</p> <p>b) As specified in the Contract.</p> <p>c) Immediately.</p>	None.
<b>4.24 Fossils</b>	<p>Take possession and care of fossils, coins, articles of value or antiquity and structures and other remains, or items of geological or archaeological interest found on the Site.</p>	<p>a) Prior to the Base Date.</p> <p>b) None.</p>	None.

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>10 Employer's Taking Over</b>			
<b>10.1 Taking Over of the Works and Sections</b>	Take over the Works.	When completed in accordance with the Contract.	None.
<b>10.2 Taking Over of Parts of the Works</b>	Not to use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part.	None.	If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, the Contractor shall be entitled to payment of any such Cost plus reasonable profit.

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>11 Defects Liability</b>			
<b>11.2 Cost of Remedying Defects</b>	Notify the Contractor (or ensure that notice is given by others) of any work to be remedied if due to any cause outside the provisions of the Contract.	Promptly.	None.
<b>11.4 Failure to Remedy Defects</b>	In the case of failure by the Contractor to remedy any defect or damage, notify the Contractor (or ensure that notice is given by others) of the date by which the defect or damage is to be remedied.	Within reasonable time.	If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, the Contractor shall be entitled to payment of any such Cost plus reasonable profit.

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# The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>14 Contract Price and Payment</b>			
<b>14.2 Advance Payment</b>	a) Make the advance payment, as an interest-free loan for mobilization. b) Cooperate with the Contractor to approve the form of the advance payment guarantee.	a) As stated in the Appendix to Tender and when the Contractor submits a guarantee in accordance with this Sub-Clause. b) None.	None.
<b>14.5 Plant and Material intended for the Works</b>	Cooperate with the Contractor to approve the form of a bank guarantee for shipped Plant and Materials.	None	None

# Construction Claims Management ( Contract Module – Part 2 )

## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>14 Contract Price and Payment</b>			
<b>14.7 Payment</b>	<ul style="list-style-type: none"><li>a) Pay the first installment of the advance payment.</li><li>b) Pay the amount certified in each Interim Payment Certificate.</li><li>c) Pay the amount certified in the Final Payment Certificate.</li></ul>	<ul style="list-style-type: none"><li>a) 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.</li><li>b) Within 56 days after the Engineer receives the Statement and supporting documents.</li><li>c) Within 56 days after the Employer receives the Final Payment Certificate.</li></ul>	Contractor entitled to suspend work, reduce the rate of work and to an extension of time and additional payment as a result of such actions (Sub-Clause 16.1) and payment of financing charges to the Contractor (Sub-Clause 14.8).

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>14 Contract Price and Payment</b>			
<b>14.9 Payment of Retention Money</b>	a) Pay the Contractor the first half of the Retention Money. b) Pay the Contractor the outstanding balance of the Retention Money.	a) When a Taking-Over Certificate has been issued and when the Engineer has certified payment. b) Promptly after the latest of the expiry of the Defects Notification Periods and when the Engineer has certified payment.	The Contractor is entitled to receive financing charges (Sub-Clause 14.7).
<b>14.15 Currencies of Payment</b>	Pay the Contractor in the currency or currencies named in the Appendix to Tender.	None	None

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>15 Termination by Employer</b>			
<b>15.2 Termination by Employer</b>	<ul style="list-style-type: none"> <li>a) Give notice of intention to terminate the Contract.</li> <li>b) Give notice of release of the Contractor's Equipment and Temporary Works.</li> </ul>	<ul style="list-style-type: none"> <li>a) 14 days prior to the termination date, or immediately in the case of the Contractor becoming bankrupt or gives or offers bribes or gratuities (or similar as defined in the clause).</li> <li>b) On completion of the Works.</li> </ul>	None
<b>15.4 Payment after Termination</b>	Pay the balance due to the Contractor after recovering any losses, damages and extra costs.	None	None
<b>15.5 Employer's Entitlement to Termination</b>	<ul style="list-style-type: none"> <li>a) Give notice of intention to terminate the Contract.</li> <li>b) Return the Performance Security.</li> <li>c) Not to terminate the Contract in order to execute the Works himself or to arrange for the Works to be executed by another contractor.</li> </ul>	<ul style="list-style-type: none"> <li>a) 28 days prior to the termination date.</li> <li>b) None.</li> <li>c) None.</li> </ul>	None

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>16 Suspension and Termination by Contractor</b>			
<b>16.4 Payment on Termination</b>	<ul style="list-style-type: none"><li>a) Return the Performance Security to the Contractor.</li><li>b) Pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release].</li><li>c) Pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.</li></ul>	Promptly..	None



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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>17 Risk and Responsibility</b>			
<b>17.1 Indemnities</b>	Indemnify and hold harmless the Contractor, the Contractor's Personnel and their respective agents, against and from all claims, damages, losses and expenses in respect of bodily injury, disease or death which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel or agents.	None.	None
<b>17.5 Intellectual and Industrial Property Rights</b>	<ul style="list-style-type: none"> <li>a) Give notice of any claim under this clause.</li> <li>b) Indemnify and hold the Contractor harmless against and from any claim, which is or was an unavoidable result of the Contractor's compliance with the Contract or as a result of any Works being used by the Employer.</li> <li>c) If requested by the Contractor, assist in contesting the claim.</li> <li>d) Not to make any admission, which might be prejudicial to the Contractor.</li> </ul>	<ul style="list-style-type: none"> <li>a) Within 28 days of receiving a claim.</li> <li>b) None.</li> <li>c) None.</li> <li>d) None.</li> </ul>	<ul style="list-style-type: none"> <li>a) Waiver of right to indemnity.</li> <li>b) None.</li> <li>c) None.</li> <li>d) None.</li> </ul>

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
GENERAL CONDITIONS			
<b>18 Insurance</b>			
<b>18.1 General Requirements for Insurances</b>	a) Cooperate with the Contractor to approve the terms of insurances. b) Effect and maintain the insurances in terms consistent with the details annexed to the Particular Conditions, wherever the Employer is the insuring Party. c) Submit evidence that the insurance has been effected, provide copies of the policies and submit evidence of payment. d) Inform the insurers of any relevant changes to the execution of the Works and ensure that insurance is maintained. e) Not to make any material alteration to the terms of any insurance without approval of the Contractor	a) None. b) None. c) Within the time frames stipulated in the Contract Data. d) As appropriate. e) None.	a) None. b) None. c) The Contractor may effect the insurance and the Contract Price shall be adjusted. d) None. e) None.

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# The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
GENERAL CONDITIONS			
<b>19 Force Majeure</b>			
<b>19.2 Notice of Force Majeure</b>	Give notice to the Contractor in the case that the Employer is, or will be prevented from performing the Employer's obligations by Force Majeure.	Within 14 days of becoming aware of the event.	None.
<b>19.3 Duty to Minimize Delay</b>	a) Use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. b) Give notice when the effects of the Force Majeure cease.	None.	None.

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## The Obligations of the Contractor

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>GENERAL CONDITIONS</b>			
<b>20 Claims, Disputes and Arbitration</b>			
<b>20.2 Appointment of the Dispute Adjudication Board</b>	<ul style="list-style-type: none"> <li>a) Jointly appoint the Dispute Adjudication Board (DAB).</li> <li>b) Not to consult the DAB without the agreement of the Contractor.</li> <li>c) Not to act alone in the termination of any member of the DAB.</li> </ul>	<ul style="list-style-type: none"> <li>a) By the date stated in the Appendix to Tender.</li> <li>b) None.</li> <li>c) None.</li> </ul>	<ul style="list-style-type: none"> <li>a) The appointing entity or official named in the Appendix to Tender shall appoint (Sub- Clause 20.3).</li> <li>b) None.</li> <li>c) None.</li> </ul>
<b>20.4 Obtaining Dispute Adjudication Board's Decision</b>	<ul style="list-style-type: none"> <li>a) Make available to the DAB additional information, access to the Site, and appropriate facilities as the DAB may require.</li> <li>b) Give effect to a DAB decision unless and until it is revised in an amicable settlement or an arbitral award.</li> </ul>	<ul style="list-style-type: none"> <li>a) Promptly.</li> <li>b) None.</li> </ul>	<ul style="list-style-type: none"> <li>a) None.</li> <li>b) The matter may be referred to arbitration (Sub- Clause 20.7).</li> </ul>

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>Annex – Procedural Rules</b>			
<b>2 General Provisions</b>	Give notice to the Dispute Adjudication Board Member that the Dispute Adjudication Agreement has taken effect.	On the Commencement Date, or upon all parties signing the Dispute Adjudication Agreement whichever is the later.	None.
<b>5 General Obligations of the Employer and the Contractor</b>	<p>a) Not to request advice from, or consultation with a DAB Member regarding the Contract otherwise than in the normal course of the DAB's activities.</p> <p>b) In the case of the DAB Member being required to make a site visit or attend a hearing, provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member (this may be undertaken by the Contractor).</p>	None.	None.
<b>6 Payment</b>	<p>a) Pay one half of the DAB fees to the Contractor.</p> <p>b) In the Case of the Contractor failing to pay the DAB Member, pay the due fees.</p>	<p>a) Within the monthly payments to the Contractor.</p> <p>b) None.</p>	The DAB Member may suspend services or resign the appointment

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## The Obligations of the Employer

CLAUSE	OBLIGATIONS	TIME FRAME	CONSEQUENCES OF NON-COMPLIANCE
<b>Annex – Procedural Rules</b>			
2.	Jointly agree the timing of and agenda for each site visit by the DAB.	None.	Timing and agenda shall be decided by the DAB.
3.	a) Attend site visits by the DAB. b) Co-ordinate site visits by the DAB in co-operation with the Contractor. c) Ensure the provision of appropriate conference facilities and secretarial and copying services to the DAB.	None.	None.
4.	a) Furnish to the DAB one copy of all documents, which the DAB may request. b) Copy the Contractor on all communications between the DAB and the Employer.	None.	None.

# **Discussion & Questions**

# *Thank You ...*

**We hope you enjoy our lecture today**

**Hope to receive your feedback and recommendations**

## Contact Info

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