

## Contents

	<b>Foreword</b>	<i>xiii</i>
	<b>Preface</b>	<i>xv</i>
	<b>About the Author</b>	<i>xvii</i>
<b>1</b>	<b>Overview of the 2017 Contracts</b>	<b>1</b>
1.1	Introduction	1
1.2	The Rainbow Suite: The Main Features of the 1999 Red, Yellow and Silver Books	2
1.2.1	The 1999 Red Book	2
1.2.2	The 1999 Yellow Book	4
1.2.3	The 1999 Silver Book	5
1.3	Contractor Risk in the Silver Book: Two Examples	7
1.3.1	Unforeseeable Difficulties	7
1.3.2	Errors in Employer's Requirements	7
1.4	New Potential Risks for Contractor and Employer in the 2017 Books	8
1.4.1	Contractor Risks	8
1.4.2	Employer Risks	10
1.5	FIDIC's Guidance for the Preparation of Particular Conditions	13
1.5.1	The Contract Data	13
1.5.2	The Special Provisions	13
1.5.3	Golden Principles	14
1.5.4	Tender Documents	14
1.5.5	Drafting Options	14
1.5.6	Building Information Modelling	15
1.6	Forms	15
<b>2</b>	<b>Key General Provisions</b>	<b>17</b>
2.1	Definitions	17
2.2	Notices and Other Communications	17
2.3	Law and Language	18
2.3.1	Governing Law	18
2.3.2	Language of the Contract/Communications	19
2.4	Priority of Documents	19
2.5	Errors in the Employer's Requirements/Delayed Drawings and Instructions	20

2.5.1	Errors in Employer's Requirements: Yellow Book Clause 1.9	20
2.5.2	Delayed Drawings and Instructions	21
2.6	Use of Documents	21
2.7	Compliance with Laws	22
2.8	Limitation of Liability	23
2.8.1	Indirect or Consequential Loss or Damage	23
2.8.2	Cap on Contractor's Total Liability	25
2.9	Contract Termination: Clause 1.16 Red and Yellow Books/1.15 Silver Book	26
<b>3</b>	<b>The Employer, the Engineer and Contract Administration</b>	<b>27</b>
3.1	The Employer	27
3.1.1	Right of Access to Site	27
3.1.2	Assistance	28
3.1.3	Employer's Personnel and Other Contractors	28
3.1.4	Employer's Financial Arrangements	28
3.1.5	Site Data and Items of Reference	29
3.1.6	Employer-supplied Materials and Employer's Equipment	29
3.2	The Engineer/Employer's Administration	29
3.2.1	Contract Administration in the Three Books: Engineer's/Employer's Representative's Role and Authority	30
3.2.2	Instructions	32
3.2.3	Instructions: The 2017 Provisions	33
3.2.4	Where the Instruction Does Not State that it is a Variation	33
3.2.5	Clause 3.5/3.4 Sub-paragraph (a)	34
3.2.6	Clause 3.5/3.4 Sub-paragraph (b)	35
3.3	Agreement or Determination	35
3.3.1	Consultation	35
3.3.2	Engineer's Determination	36
3.3.3	Time Limits	36
3.3.4	Effect of Agreement or Determination	37
3.3.5	Dissatisfaction with Engineer's Determination	38
3.4	Meetings	39
<b>4</b>	<b>The Contractor and Fitness for Purpose</b>	<b>41</b>
4.1	Contractor's General Obligations	41
4.1.1	Yellow and Silver Books	41
4.1.2	Red Book	41
4.1.3	'Fitness for Purpose'	42
4.1.4	Other General Obligations	45
4.2	Contractor to Provide Performance Security	45
4.3	Contractor's Representative	47
4.4	Subcontractors	47
4.5	Nominated Subcontractors	48
4.6	Contractor's Documents: The 2017 Red Book	49
4.7	Cooperation	50
4.8	Quality Management and Compliance Verification Systems	50

4.8.1	Quality Management System	51
4.8.2	Compliance Verification	51
4.9	Use of Site Data	52
4.10	Unforeseeable Difficulties/Physical Conditions	53
4.10.1	Unforeseeable Physical Conditions: Procedure	54
4.11	Other Contractor's Obligations	55
<b>5</b>	<b>Design</b>	<b>57</b>
5.1	Contractor's General Design Obligations	57
5.1.1	Silver Book: Errors in Employer's Requirements	57
5.1.2	Silver Book: Designs by Employer	58
5.1.3	Silver Book: Design Personnel	58
5.1.4	Yellow Book: Errors in Employer's Requirements	59
5.1.5	Yellow Book: Designs by Employer	61
5.1.6	Yellow Book: Design Personnel	61
5.2	Contractor's Documents: 2017 Yellow and Silver Books	62
5.3	Other Design-related Provisions	63
<b>6</b>	<b>Plant, Materials and Workmanship/Staff and Labour</b>	<b>65</b>
6.1	Staff and Labour	65
6.2	Plant, Materials and Workmanship	65
6.2.1	Execution, Samples and Inspection	67
6.2.2	Testing by the Contractor	67
6.2.3	Defects and Rejection	68
6.2.4	Remedial Work	69
6.2.5	Ownership of Plant and Materials/Royalties	69
<b>7</b>	<b>Commencement, Delays and Extensions of Time, and Employer's Suspension of the Works</b>	<b>71</b>
7.1	Commencement	71
7.2	Time for Completion	72
7.3	The Programme	72
7.3.1	Contents of the Initial and any Revised Programme	73
7.3.2	Other Provisions: Clause 8.3	76
7.4	Advance Warning	76
7.5	Extensions of Time	77
7.5.1	Yellow and Red Books	77
7.5.2	Silver Book	78
7.5.3	Completion	79
7.6	The Specified Causes of Delay to Completion	80
7.6.1	Variations	80
7.6.2	A Cause of Delay Giving an Entitlement to an Extension Under Another Clause	82
7.6.3	Exceptionally Adverse Climatic Conditions: Red and Yellow Books	82
7.6.4	Unforeseeable Shortages	82
7.6.5	Delays, Impediments or Preventions Caused by or Attributable to the Employer	83

7.7	Concurrent Causes	83
7.8	Delay Damages	85
7.8.1	Clause 8.8: First Paragraph	85
7.8.2	Clause 8.8: Second and Third Paragraphs	89
7.8.3	Other Delay-related Provisions	89
7.9	Employer's Suspension of the Works	90
7.9.1	Right to Instruct Suspension	90
7.9.2	Effects of Suspension	90
7.9.3	Payment for Plant and Materials After Suspension: Clause 8.11	90
7.9.4	Prolonged Suspension: Clause 8.12	91
7.9.5	Instruction to Resume Work: Clause 8.13	91
<b>8</b>	<b>Testing on and After Completion and Employer's Taking Over</b>	<b>93</b>
8.1	Testing on Completion	94
8.1.1	Contractor's Obligations	94
8.1.2	Delayed Tests	95
8.1.3	Retesting	95
8.1.4	Failure to Pass Tests on Completion	95
8.2	Employer's Taking Over	97
8.2.1	The 1999 Contracts	97
8.2.2	The 2017 Yellow Book	97
8.2.3	The 2017 Red and Silver Books	98
8.2.4	Procedure Under Clause 10.1	99
8.2.5	Wording of the Deeming Provision:	100
8.2.6	Taking Over of Parts: Clause 10.2	101
8.2.7	Other Clause 10 Provisions	101
8.3	Tests After Completion	102
8.3.1	The Yellow Book	102
8.3.2	The Silver Book	104
<b>9</b>	<b>Defects After Taking Over, Acceptance of the Works and Unfulfilled Obligations</b>	<b>107</b>
9.1	Contractor's Basic Obligation	107
9.2	Who Is Responsible for the Cost?	108
9.3	Extending the DNP	108
9.4	Other Obligations	109
9.5	Performance Certificate	110
9.6	Unfulfilled Obligations	110
<b>10</b>	<b>Measurement, the Price and Payment</b>	<b>113</b>
10.1	Measurement and Valuation: Clause 12 of the 2017 Red Book	113
10.1.1	Measurement Procedures	113
10.1.2	Method of Measurement	114
10.1.3	Valuation	114
10.1.4	Omissions	115
10.2	The Contract Price	115
10.2.1	Yellow Book	115

10.2.2	Red Book	116
10.2.3	Silver Book	116
10.3	Advance Payment	117
10.4	Plant and Materials Intended for the Works	117
10.5	The Payment Process	118
10.5.1	Interim Payments	119
10.5.2	Statement at Completion	122
10.5.3	Final Statement	123
10.5.4	Discharge	124
10.5.5	Issue of Final Payment Certificate/Final Payment	124
10.5.6	Payment	126
10.5.7	Delayed Payment	127
10.6	Cessation of Employer's Liability	127
<b>11</b>	<b>Variations and Adjustments to the Contract Price</b>	<b>129</b>
11.1	Variations	129
11.1.1	Meaning of 'Variation'	129
11.1.2	The Right to Vary: Omitting Works to Be Carried out by Others	130
11.1.3	Contractor's Objections to a Variation	131
11.1.4	Engineer/Employer's Response	133
11.2	Value Engineering	134
11.2.1	The 1999 Editions	134
11.2.2	The 2017 Books	134
11.3	Variation Procedure	135
11.3.1	Variation by Instruction: Clause 13.3.1	135
11.3.2	Variation by Request for Proposal: Clause 13.3.2	138
11.3.3	New Applications of the Variation Procedure	139
11.4	Other Adjustments to the Contract Price	140
11.4.1	Adjustments for Changes in Laws	140
11.4.2	Adjustments for Changes in Cost	141
<b>12</b>	<b>Termination and Suspension</b>	<b>143</b>
12.1	Employer Termination: For Contractor Default	144
12.1.1	The Grounds of Termination: Clause 15.2, 1999 Editions	145
12.1.2	The Termination Procedure Under Clause 15.2, 1999 Editions	147
12.1.3	Valuation and Payment After a Clause 15.2 Termination	147
12.1.4	The Grounds of Termination: Clause 15.2.1, 2017 Editions	149
12.1.5	Termination: Clause 15.2.2, 2017 Editions	151
12.1.6	Termination Procedure Under Clauses 15.2.3 and 15.2.4, 2017 Editions	151
12.1.7	Valuation and Payment After a Clause 15.2 Termination	151
12.2	Employer's Termination: For Convenience	152
12.2.1	Clause 15.5, 2017 Editions	153
12.2.2	Clauses 15.6 and 15.17, 2017 Editions	154
12.3	Contractor's Right to Suspend	154
12.4	Contractor's Termination	155
12.4.1	The Grounds of Termination: Clause 16.2, 1999 Editions	156
12.4.2	Termination Under Clause 16.2, 1999 Editions	158

12.4.3	Effects of Termination and Payment	158
12.4.4	The Grounds of Termination Under Clause 16.2.1, 2017 Editions	159
12.4.5	Termination Under Clause 16.2, 2017 Editions	160
12.4.6	Contractor's Obligations After Termination	161
12.4.7	Payment After Contractor's Termination	161
<b>13</b>	<b>Care of the Works, Indemnities and Insurance</b>	<b>163</b>
13.1	Care of the Works	163
13.1.1	Clause 17.1: Responsibility for Care of the Works	163
13.1.2	Clause 17.2: Liability for Care of the Works	164
13.1.3	The Clause 17.2 Events	165
13.1.4	Consequences of a Clause 17.2 Event	167
13.1.5	Combined Causes	168
13.2	Indemnities	168
13.2.1	Indemnities by Contractor: 2017 Yellow and Silver Books	168
13.2.2	Indemnities by Contractor: 2017 Red Book	170
13.2.3	Indemnities by Employer	170
13.2.4	Shared Indemnities	171
13.3	Intellectual and Industrial Property Rights	171
13.4	Insurance	172
13.4.1	The 2017 Books	172
13.4.2	The Works: Clause 19.2.1	172
13.4.3	Goods: Clause 19.2.2	173
13.4.4	Liability for Breach of Professional Duty: Clause 19.2.3	173
13.4.5	Injury to Persons and Damage to Property: Clause 19.2.4	173
13.4.6	Injury to Employees: Clause 19.2.5	174
13.4.7	Other Insurances Required by the Applicable Law and by Local Practice: Clause 19.2.6	174
<b>14</b>	<b>Exceptional Events</b>	<b>175</b>
14.1	Examples of Exceptional Events	175
14.2	Notice Requirements	176
14.3	Duty to Minimise Delay	176
14.4	Consequences of an Exceptional Event	177
14.5	Optional Termination	178
14.6	Release from Performance Under the Applicable Law	178
<b>15</b>	<b>Employers' and Contractors' Claims</b>	<b>181</b>
15.1	The Categories of Claim: Clause 20.1	181
15.2	Claims for Money and/or Time	182
15.2.1	The Notice of Claim: Clause 20.2.1	183
15.2.2	The Clause 20.2.1 Time Bar	183
15.2.3	Initial Response to the Claim: Clause 20.2.2	184
15.2.4	Contemporaneous Records: Clause 20.2.3	185
15.2.5	The Fully Detailed Claim: Clause 20.2.4	185
15.2.6	The Clause 20.2.4 Time Bar	186
15.2.7	Agreement or Determination of the Claim: Clause 20.2.5	187

15.2.8	Comparison with 1999 Forms	188
15.2.9	Agreeing or Determining Time Bar Issues	189
15.2.10	Other Time Bars Affecting the Claim	190
15.2.11	The Time Bars: Summary	190
15.2.12	Further Details	191
15.2.13	Claims of Continuing Effect: Clause 20.2.6	192
15.3	General Requirements: Clause 20.2.7	192
<b>16</b>	<b>Dispute Resolution</b>	<b>195</b>
16.1	The Three-tier Process in the 1999 Contracts	196
16.2	The 2017 Contracts	196
16.2.1	Disputes	197
16.2.2	Procedure for Obtaining the DAAB's Decision	197
16.2.3	Referring the Dispute: Clause 21.4.1	198
16.2.4	Parties' Obligations After Dispute Referred: Clause 21.4.2	198
16.2.5	The DAAB's Decision: Clause 21.4.3	198
16.2.6	Dissatisfaction with the DAAB's Decision: Clause 21.4.4	199
16.3	Appointment of the DAAB	201
16.3.1	Sole Member or Three	202
16.3.2	The DAAB Agreement and DAAB Procedural Rules	203
16.4	Failure to Appoint DAAB Members	204
16.5	Avoidance of Disputes	204
16.6	Amicable Settlement	205
16.7	Arbitration	206
16.7.1	Party Commencing Arbitration	206
16.7.2	Time for Commencing an Arbitration	207
16.7.3	Choice of Arbitration	207
16.7.4	ICC Arbitration	208
16.7.5	The Tribunal's Powers	209
16.7.6	Payment of Sums Awarded	210
16.7.7	Costs	210
16.8	Failure to Comply with the DAAB's Decision	210
	<b>Index</b>	<b>213</b>

<http://www.pbookshop.com>