

DAVID KINLAN AND DIRK ROUKEMA

ADVERSE PHYSICAL CONDITIONS AND THE EXPERIENCED CONTRACTOR TEST

ABSTRACT

The assessment of a Project's soil conditions is the most important factor to determine dredgeability, the choice of suitable equipment, production rates and ultimately the associated costs for the dredging works. The basic principle of "adverse physical conditions" is whether or not they are foreseeable and whether or not there is a contract clause that will give the contractor the right to claim for additional time and money in case unforeseeable physical conditions occur, which were not reasonably foreseeable by "an experienced contractor," the term commonly used by FIDIC.

A prudent tenderer when analysing the site data needs to be assured that the data has been collected and prepared by a competent soil investigation company in accordance with relevant international standards such as British Standards (BS) and American Society for Testing and Materials (ASTM) or others. Three examples are described to illustrate the direct relationship between dredging costs and actual soil or rock conditions encountered with examples of the relationship between soil and rock conditions on production and costs. Variations in soil or rock conditions contribute the greatest cost uncertainty involved in dredging projects.

Rather than rely on a standard adverse physical conditions clause in the case of significant capital works involving excavation of varying subsoil, weathered or solid rock, the suggestion is made that contracting parties should preferably establish limiting reference conditions in the Contract beyond which the Contractor is entitled to claim for additional compensation.

Of the contracts available for use on dredging contracts only the FIDIC 1999 Red Book and the United Kingdom's NEC 3 Engineering and Construction Contract deal with the broad concept of reference conditions.

Some suggestions and recommendations are outlined therein for both Employers and Contractors. The authors wish to thank Jim Anderson and Bart Graswinckel for their peer review of the article.

Above: The Bresand Fixed Link was ground breaking in many aspect, not least of which was the application of reference conditions to deal with adverse physical conditions. A predefined system was used to make the uncertainty involved in "unforeseeable" physical conditions manageable for both the Employer and the Contractor.

INTRODUCTION

The concept of how adverse physical conditions are dealt with verges on the holy grail of marine infrastructure projects. On the one side they are part of a Marine Contractors "must have" clauses whilst Clients often view it as the equivalent of a "get out of jail free" card. The balance of risk has been hotly debated and fought over the years with the results little published or revealed due to disputes being resolved in arbitration or adjudication.

Added to this mix is the notion of "unforeseeability" and what "an experienced contractor," the term used by FIDIC, can expect. It is no wonder that the vast majority of marine infrastructure claims revolve around the issue of sub-surface conditions.

The assessment of a Project's soil conditions is the most important factor determining dredgeability, the choice of suitable equipment, production rates and ultimately the associated costs for the dredging works. Even a full-scale and technically perfect soil investigation will only test a fraction of the volume of material that is to be dredged by the Contractor. Combined with the fact that natural conditions like rock strength,

Adverse Physical Conditions The Experienced Contractor

David Kinlan



Adverse Physical Conditions The Experienced Contractor:

Adverse Physical Conditions and the Experienced Contractor David Kinlan, 2014 **The Presentation and Settlement of Contractors' Claims** Geoffrey Trickey, Mark Hackett, 2001 Contractual disputes often involving large sums of money occur with increasing frequency in the construction industry This book presents in non legal language sound professional advice from a recognized expert in the field on the practical aspects of claims This edition has been brought right up to date by taking into account legal decisions promulgated over the last 17 years as well as reflecting the effect of current inflation on claims The new edition is based on the 1998 JCT contract Fully updated second edition of this practical guide Worked examples to back up the advice offered and relate it to practitioners experience **The Presentation and Settlement of Contractors' Claims - E2** Mark Hackett, Geoffrey Trickey, 2002-09-11 Contractual disputes often involving large sums of money occur with increasing frequency in the construction industry This book presents in non legal language sound professional advice from a recognized expert in the field on the practical aspects of claims This edition has been brought right up to date by taking into account legal decisions promulgated over the last 17 years as well as reflecting the effect of current inflation on claims The new edition is based on the 1998 JCT contract Fully updated second edition of this practical guide Worked examples to back up the advice offered and relate it to practitioners experience **FIDIC - A Guide for Practitioners** Axel-Volkmar Jaeger, Götz-Sebastian Hök, 2009-11-11 In 1999 a suite of three new conditions of contract was published by FIDIC following the basic structure and wording harmonised and updated around the previous FIDIC Design Build and Turnkey Contract the 1992 Orange Book These conditions known as the FIDIC rainbow were the Conditions of Contract for Construction the so called Red Book for works designed by the Employer Plant and Design Build the so called Yellow Book for works designed by the Contractor EPC Turnkey Projects the so called Silver Book for works designed by the Contractor The first is intended for construction works where the Employer is responsible for the design as for per the previous so called Red Book 4th Edition 1987 with an important role for the Engineer The other two conditions of contract are intended for situations when the Contractor is responsible for the design The Plant and Design Build Contract has the traditional Engineer while the EPC Turnkey Contract has a two party arrangement generally with an Employer's Representative as one of the parties 200 Contractual Problems and their Solutions J. Roger Knowles, 2012-04-09 200 Contractual Problems and their Solutions This book examines 200 contractual problems which regularly arise on building and engineering projects and provides a detailed explanation of their solutions citing standard contract conditions and key parts of legal judgements as authority A succinct summary is provided at the end of each detailed solution It covers problems together with their solutions in respect of Procurement matters Tenders and bidding Design issues Letters of intent Contractor's programme Contractor's float Delays Concurrent Delays Extensions of time Liquidated delay damages Unliquidated damages Variations Loss and expense additional cost claims Acceleration Global claims Payment Damage to the

works Exclusion clauses Retention of title Practical completion Defect correction Adjudication This book deals with a broad range of construction contracts including JCT Standard Form and Design and Build New Engineering Contract NEC3 ICE and GC Works 1 This book was first published under the title of One Hundred Contractual Problems and Their Solutions with a second edition entitled One Hundred and Fifty Contractual Problems and their Solutions This third edition adds 50 new problems and replaces 15 of those in the last edition Of the remainder half have been the subject of revision Deserves a place on every site and in every office as the standard handbook on contractual problems Construction Law Digest

The FIDIC Red Book Contract Christopher Seppälä, 2023-04-25 Conditions of Contract for Construction known universally as the Red Book published by the International Federation of Consulting Engineers known by its French acronym FIDIC is the most widely used standard form of international construction contract This book is a detailed commentary on the 2022 reprint of the 2017 FIDIC Red Book For each of the Red Book's 168 Sub Clauses the commentary identifies changes from the 1999 edition analyses the meaning and significance of the Sub Clause and lists related Sub Clauses describes related international arbitration awards national court decisions and legal principles and where appropriate proposes amendments to improve the Sub Clause As the FIDIC Yellow and Silver Books are very similar to the Red Book much of the commentary is equally applicable to those forms of contract The author is a FIDIC insider having served for more than thirty years as Legal Special Adviser to or Member of the FIDIC Contracts Committee which is responsible for preparing FIDIC's contracts This book is an indispensable resource for all parties called on to work with a FIDIC contract With guidance for every stage of a construction project whether in drafting negotiating performing interpreting or administering a FIDIC contract the book's easy to use structure includes such issues and topics as the following introduction to FIDIC and its contracts and to publications of FIDIC and others relevant to the Red Book including the 2022 FIDIC Contracts Guide critical examination of each Sub Clause and advice for amending the same in order to better adapt it to the interests of each party the Employer or the Contractor special attention to each Sub Clause relating to the Contractor's and the Employer's claims and claims procedure and to how to assert claims effectively as well as to time bars and other pitfalls and how they may be overcome detailed examination of Sub Clauses relating to the referral of issues or disputes to the Dispute Avoidance Adjudication Board and if necessary to international arbitration and optimal strategies for doing so discussion of the changes required to the 2017 Red Book by The World Bank's Conditions of Particular Application COPA reference where appropriate to the UNIDROIT Principles of International Commercial Contracts and trade usages comprehensive discussion of practical issues that arise under common law civil law and international legal principles especially when a contract is with a state or public body comparison of common law and civil law methods of contract interpretation and a suggested practical approach to interpretation given a FIDIC contract's international arbitration clause and overcoming problems that can arise when a contract is governed by the law of a less developed country Legal and technical terms are clearly defined and numerous figures and tables are included

to illustrate steps in contract procedures Detailed attention is paid to terminological distinctions among the various legal traditions including a comparison of British English and American English construction contract terms Unquestionably the most detailed and thorough commentary ever published on the FIDIC Red Book this highly practical work enables preparers of FIDIC contracts to amend and adapt the Red Book s provisions to a particular project Dispute adjudicators arbitrators and judges will welcome the book s authoritative guidance on interpreting the provisions of a FIDIC contract and engineers and other construction professionals involved in contract administration will appreciate the book s many practical features

Current Commercial Cases 2009 , Contracts for Infrastructure Projects Philip Loots,Donald Charrett,2022-05-18
Contracts for Infrastructure Projects An International Guide provides a guide to the law relating to construction contracts for infrastructure projects it is intended for the use of engineers and other professionals who are involved in the negotiation and administration of construction contracts to enable them to understand the risks involved and how to minimise them The principles of construction law outlined in this book apply to small construction contracts as well as very large contracts for which the contract sum may be in the billions of dollars The focus of the book is on construction contracts entered into by commercial organisations operating in a business environment Contract law generally assumes that such parties are of equal bargaining power and puts relatively few fetters on their ability to agree on the terms of their bargain However where legislation impacts on the execution of construction projects or the operation of construction contracts it may be of major importance in protecting the rights of weaker parties or third parties It is assumed that the users of this book will be familiar with the general concepts of tendering and contracting for engineering and construction projects but may not have any formal knowledge of the law To the extent possible the emphasis is on general principles of contract law that are widely accepted in many jurisdictions Examples are drawn from case law in a number of common law jurisdictions as well as from civil codes A Contractor's Guide to the FIDIC Conditions of Contract Michael D. Robinson,2011-02-16 This guide will help the contractor s staff overcome some of the difficulties encountered on a typical international contract using FIDIC forms The majority of FIDIC based contracts use the Red Book Conditions of Contract for Construction so this book concentrates on the use of those particular forms Supplementary comments are included in Appendix C for the Yellow Book Plant legal advice should be obtained as and when necessary particularly if the Contractor has little or no knowledge of the local law Armed on site with a copy of The Contractor and the FIDIC Contract the Contractor s Representative will be more able to avoid contractual problems rather than spend considerable time and energy resolving those problems once they have arisen

FIDIC Contracts: Law and Practice Ellis Baker,Ben Mellors,Scott Chalmers,Anthony Lavers,2013-07-31 FIDIC Contracts Law and Practice is sure to become the leading industry standard guide to using the FIDIC forms and is the only book to date which deals with the whole suites of contracts including the new gold book for Design Build and Operate projects The White Case work is outstanding in its detailed consideration and treatment of the legal aspects of the interpretation and application

of the Conditions touching on many points that most people would not have encountered Humphrey LLOYD International Construction Law Review 2010 ICLR 386 Guide to the FIDIC Conditions of Contract for Construction Michael D. Robinson, 2023-02-21 Enables readers to easily understand the contract to enable better compliance and efficiency Guide to the FIDIC Conditions of Contract for Construction The Red Book 2017 helps the reader overcome some of the difficulties encountered on a typical international construction project using the FIDIC Construction Contract 2nd Edition the 2017 Red Book by summarizing the activities and duties of those involved and crystallizing the requirements of the contract To aid in reader comprehension the text explains clauses in the sequence they appear in the contract but also in the order they happen in real time on site It further provides practical guidance in a concise manner and in straightforward jargon free language It is a highly practical resource for use during the project rather than a legal review of the contractual requirements ensuring readers are fully conversant with the revised requirements and procedures mandated by the 2017 edition of the contract Guide to the FIDIC Conditions of Contract for Construction The Red Book 2017 includes A review of the duties and responsibilities of the three parties the Employer the Engineer and the Contractor engaged on a FIDIC based Contract A review of the flow of documentation and instructions which is to be provided by one party to another party throughout the contract period Practical guidelines are provided for the avoidance of disputes and delays in order that contracts are completed as planned Guide to the FIDIC Conditions of Contract for Construction The Red Book 2017 is a practical and highly useful resource for engineers consultants project managers and others who are engaged in the site management of international projects using the FIDIC Construction Contract along with those involved in contractual administration on behalf of the client **Integrated Commercial Management in Construction: A Practical Guide for Contractors** , Cost overrun remains one of the most persistent challenges in construction This book presents a practical framework for understanding controlling and minimising cost overruns through the integration of estimation budgeting resource planning procurement contract administration change management and claims management all aligned with the FIDIC 1999 Red Book standards **Claims on Highway Contracts** Robert N. Hunter, 1997 Most civil engineering projects carried out in the UK which are concerned with the construction or maintenance of highways employ the 5th edition of the ICE Conditions of Contract and the Manual of Contract Documents for Highway Works In order to maximise returns in construction works or often nowadays to minimise losses it is necessary for engineers contractors and clients to have a full understanding of these documents particularly those elements which have a financial connotation Claims on highway contracts has been specifically written to explore those parts of the 5th edition of the ICE Conditions of Contract and the Manual of Contract Documents for Highway Works which are particularly important in the commercial aspects of highway contracts and to examine how they apply in claims situations There have been many books written on claims by lawyers which are full of legalese Claims on highway contracts is the first and only book which has been written by a practising engineer who works in this field and has

experience of the claims minefield to provide advice in a practical and straightforward manner Effective Procurement of Ground Investigation Association of Geotechnical and Geoenvironmental Specialists (AGS),2025-03-19 Effective Procurement of Ground Investigation is a client's best practice guide to procuring good quality ground investigations which will ensure that ground related and other risks are suitably and sufficiently assessed and that the required data is obtained to meet the project objectives *FIDIC Yellow Book, Revised edition* Jakob B. Sørensen,2024-09-26 *FIDIC Yellow Book* is a practical guide for anyone involved in preparing administering or contributing to the FIDIC suite of contracts 2017 edition This revised edition covers a number of recent developments including the 2022 amendments impacts of COVID 19 and the war in Ukraine as well as guidance on use of FIDIC Contracts **Contractual Dimensions in Construction** Chandana Jayalath,2011-01-04 Construction contractors must regularly wade through complicated contractual and technical issues Claims and disputes can ruin a project or prevent it from even getting started While many studies concentrate on case law imported from different jurisdictions **CONTRACTUAL DIMENSIONS IN CONSTRUCTION** takes a practical approach that relies on quantity surveying This approach enables all parties involved to establish and maintain fair agreements for a dispute free project delivery With this guidebook you will learn how to anticipate and avoid problems while concentrating on solutions Topics covered include Contract formation existence and invalidation Contract and pricing modalities Contract interpretation Attributes of contractual provisions Defaults and remedies Variations claims and disputes You'll also learn about the duties rights and obligations of the parties to a contract as well as the issues related to commencement completion extension and damages Examples and real life scenarios make learning about the contractual process easy **CONTRACTUAL DIMENSIONS IN CONSTRUCTION** is for all contract specialists commercial managers forensic delay analysts quantity surveyors cost engineers and undergraduates studying construction and surveying related subjects Those who are interested in para legal functions related to construction may also find this book of value as will students of engineering disciplines

Delay and Disruption in Construction Contracts Andrew Burr,2024-10-31 Now in its sixth edition *Delay and Disruption in Construction Contracts* retains its position as a foremost guide to the complex issues arising in the course of construction contracts with robustly updated content throughout and the addition of several new chapters with a focus upon such topics as standard form provisions for the recovery of loss or expense and Chinese and Peruvian construction law amongst others Expertly covering the manner in which delay and disruption should be considered at each stage of a construction project from inception to completion and beyond this book includes Insight from an international team of specialist advisory editors Comparative analysis of the law in this field in Australia Canada England and Wales Hong Kong Ireland New Zealand the United States and in civil law jurisdictions Commentary upon and comparison of standard forms from Australia Ireland New Zealand the United Kingdom USA and elsewhere including several new forms Chapters on adjudication dispute boards and the civil law dynamic Extensive coverage of Building Information Modelling New chapters on Chinese Nordic Peruvian

Singaporean and Malaysian construction law New in depth discussion of the JCT 2016 suite Updated case law linked directly to the principles explained in the text This book is an essential reference for any lawyer dispute resolver project manager architect engineer contractor or academic involved in the construction industry **Ice Conditions of Contract G.** Hawker,1999 Definitions and interpretation Engineer and Engineer s representative Assignment and Sub Contracting Contract Documents General obligations Workmanship and Materials Commencement time and delays Liquidated Damages for Delay Certificate of Substantial Completion Outstanding work and defects Alterations additions and omissions Property in materials and contractor s equipments Measurement Provisional and prime cost sums and nominated sub contracts Certificates and payment Remedies and powers Frustration War Clause Settlement of disputes Application to Scotland Notices Tax matters Special conditions *A Practical Approach to Conditions of Contract for Civil Engineering Works* David Y.K. Leung,2010-08-01 This book provides a comprehensive commentary and guidance to readers on the current edition 1999 Edition of General Conditions of Contract for Civil Engineering Works the General Conditions which the Hong Kong Government uses for all its civil engineering contracts The book describes 46 out of 90 clauses in the General Conditions and their practical application with explanations in plain and simple language under such headings as Commentary Analysis and Application The listing of equivalent clauses of the more user friendly English ICE Conditions and the international FIDIC Conditions together enables the readers to understand the meaning of the General Conditions from a different context For those readers who find it easier to read in Chinese the translation will help them to compare with and understand the original English text The book is therefore useful to students consulting engineers surveyors and lawyers who want to understand more about the Hong Kong construction practice **Keating on Construction Contracts eBook** Vivian Ramsey,Stephen Furst,2015 Online current version of Keating on construction contracts Available through the Westlaw database University username and password required

The book delves into Adverse Physical Conditions The Experienced Contractor. Adverse Physical Conditions The Experienced Contractor is a crucial topic that must be grasped by everyone, from students and scholars to the general public. This book will furnish comprehensive and in-depth insights into Adverse Physical Conditions The Experienced Contractor, encompassing both the fundamentals and more intricate discussions.

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