

(双语课专用教材)

施工合同条件

Conditions of Contract for Construction



主编：白越

华北科技学院

建筑工程学院工程管理系

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■ 出版前言

1、FIDIC 的含义及说明

“FIDIC”一词是国际咨询工程师联合会（法文 FEDERATION INTERNATIONALE DES INGENIEURS - CONSEILS）的缩写。

FIDIC 合同条件 FIDIC 即是国际咨询工程师联合会（Fédération Internationale Des Ingénieurs-Conseils），它于 1913 年在英国成立。第二次世界大战结束后 FIDIC 发展迅速起来。至今已有 60 多个国家和地区成为其会员。中国于 1996 年正式加入。FIDIC 是世界上多数独立的咨询工程师的代表，是最具权威的咨询工程师组织，它推动着全球范围内高质量、高水平的工程咨询服务业的发展。

FIDIC 条件的标准文本由英语写成。

FIDIC 合同条件第一版由国际咨询工程师联合会于 1957 年颁布，1963 年 FIDIC 合同条件第二版、1977 年 FIDIC 合同条件第三版、1987 年 FIDIC 合同条件第四版相继问世。

目前使用的国际咨询工程师联合会（FIDIC）编制的《业主/咨询工程师标准服务协议书》、《设计—建造与交钥匙工程合同条件》、《电气与机械工程合同条件》、《土木工程施工合同条件》、《土木工程施工分包合同条件》一般分为协议书、通用（标准）条件和专用特殊条件等三大部分。

FIDIC 合同的种类

- （一）FIDIC 业主/咨询工程师标准服务协议书条件（白皮书）
- （二）FIDIC 设计—建造与交钥匙工程合同条件（橘皮书）
- （三）《电气与机械工程合同条件》（黄皮书）
- （四）FIDIC 土木工程施工合同条件（红皮书）

2、FIDIC 合同条件应用的意义

FIDIC 被称为是“国际土木工程行业的圣经，是国际通用的语言”。中国目前应用 FIDIC 合同条款的主要行业是建筑工程行业，而且凡是采用国际招标的合同或者与国际承包商签署的合同都要用 FIDIC 合同来签署，如：世界银行、亚洲银行、非洲银行等。随着进入 WTO 后中国市场的逐步开放，工程项目的逐步国际化后，我国的工程建设项目将必须按照国际惯例采纳科学、公正、严谨的 FIDIC 合同条款。

国内目前工程行业的合同实质上是不平等的合同，业主的地位比承包商高的多，而 FIDIC 条款对业主和承包商都同时进行制约，双方地位平等。实际上用过 FIDIC 合同条款的人都知道，采用 FIDIC 合同条件签署的合同，项目进行期间，双方会主动配合，减少了很多不必要的麻烦，反倒非常有利于项目的运作。所以目前国内很多公司都已经认识到学习 FIDIC 合同条件的必要性和重要性，都开始研究和学习 FIDIC 合同条件了。

目前 FIDIC 合同只适合于土木工程和建设行业。其实合同问题，存在于各个行业。所以，FIDIC 正在将 FIDIC 理念逐步通用各个行业中去。

3、FIDIC 合同条件的应用方式

- 1) 国际金融组织贷款和一些国际项目直接采用

在世界各地，凡世行、亚行、非行贷款的工程项目以及一些国家和地区的工程招标文件中，大部分全文采用 FIDIC 合同条件。在我国，凡亚行贷款项目，全文采用 FIDIC “红皮书”。凡世行贷款项目，在执行世行有关合同原则的基础上，执行我国财政部在世行批准和指导下编制的有关合同条件。

2) 合同管理中对比分析使用

许多国家在学习、借鉴 FIDIC 合同条件的基础上, 编制了一系列适合本国国情的标准合同条件。这些合同条件的项目和内容与 FIDIC 合同条件大同小异。主要差异体现在处理问题的程序规定上以及风险分担规定上。FIDIC 合同条件的各项程序是相当严谨的, 处理业主和承包商风险、权利及义务也比较公正。因此, 业主、咨询工程师、承包商通常都会将 FIDIC 合同条件作为一把尺子、与工作中遇到的其它合同条件相对比, 进行合同分析和风险研究, 制定相应的合同管理措施, 防止合同管理上出现漏洞。

3) 在合同谈判中使用

FIDIC 合同条件的国际性、通用性和权威性使合同双方在谈判中可以以“国际惯例”为理由要求对方对其合同条款的不合理、不完善之处作出修改或补充, 以维护双方的合法权益。这种方式在国际工程项目合同谈判中普遍使用。

4) 部分选择使用

即使不全文采用 FIDIC 合同条件, 在编制招标文件、分包合同条件时, 仍可以部分选择其中的某些条款、某些规定、某些程序甚至某些思路, 使所编制的文件更完善、更严谨。在项目实施过程中, 也可以借鉴 FIDIC 合同条件的思路和程序来解决和处理有关问题。

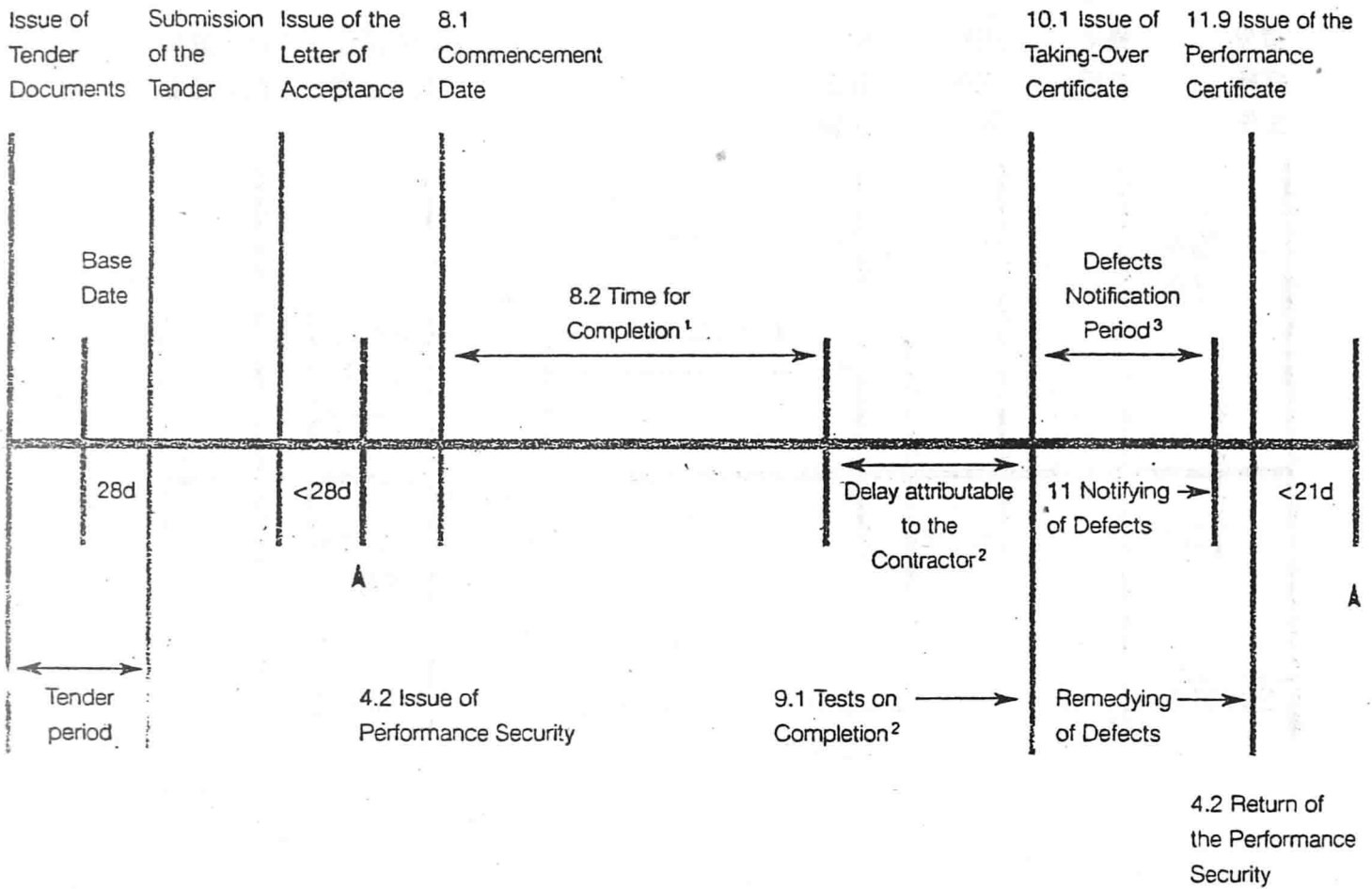
4、学习 FIDIC 合同条件的意义和目的

系统地、认真地学习和掌握 FIDIC 合同条件是每一位工程管理人员掌握现代化项目管理、合同管理理论和方法, 提高管理水平的基本要求, 也是我国工程项目管理与国际接轨的基本条件。系统地、认真地学习和掌握 FIDIC 合同条件是每一位工程管理人员掌握现代化项目管理、合同管理理论和方法, 提高管理水平的基本要求, 也是我国工程项目管理与国际接轨的基本条件。目前, 我国土木工程和工程管理行业面临着许多机遇与挑战。不少施工单位参与了许多大型工程项目的建设, 对 FIDIC 合同条件及管理模式有了一定的体会和认识。进一步加强这方面的学习, 关注和及时获取这方面的信息, 对提高管理水平是十分有益的。此外, 每一种 FIDIC 合同条件文本主要包括两个部分, 即通用条件和专用条件, 在使用中可利用专用条件对通用条件的内容进行修改和补充, 以满足各类项目和不同需要。FIDIC 系列合同条件的优点是, 具有国际性、通用性、公正性和严密性; 合同各方职责分明, 各方的合法权益可以得到保障; 处理与解决问题程序严谨, 易于操作。FIDIC 合同条件把与工程管理相关的技术、经济、法律三者有机地结合在一起, 构成了一个较为完善的合同体系。

FIDIC 合同条件的文本大多来自英文原文, 虽然有部分中译本, 但只是一些通用条款的翻译范本, 而对于特殊条件和针对某项具体合同协议书或招投标文件等理解和掌握, 则需要工程管理专业本科毕业生具有直接阅读、翻译、和诠释的能力, 同时对于其掌握外文原文资料的熟练性、准确性和快速性也提出实战应用的要求。而最直接和有效的教学方式应该是利用双语教学模式来传授 FIDIC 合同条件的专业和外语知识, 这是事半功倍且为双赢的策略。

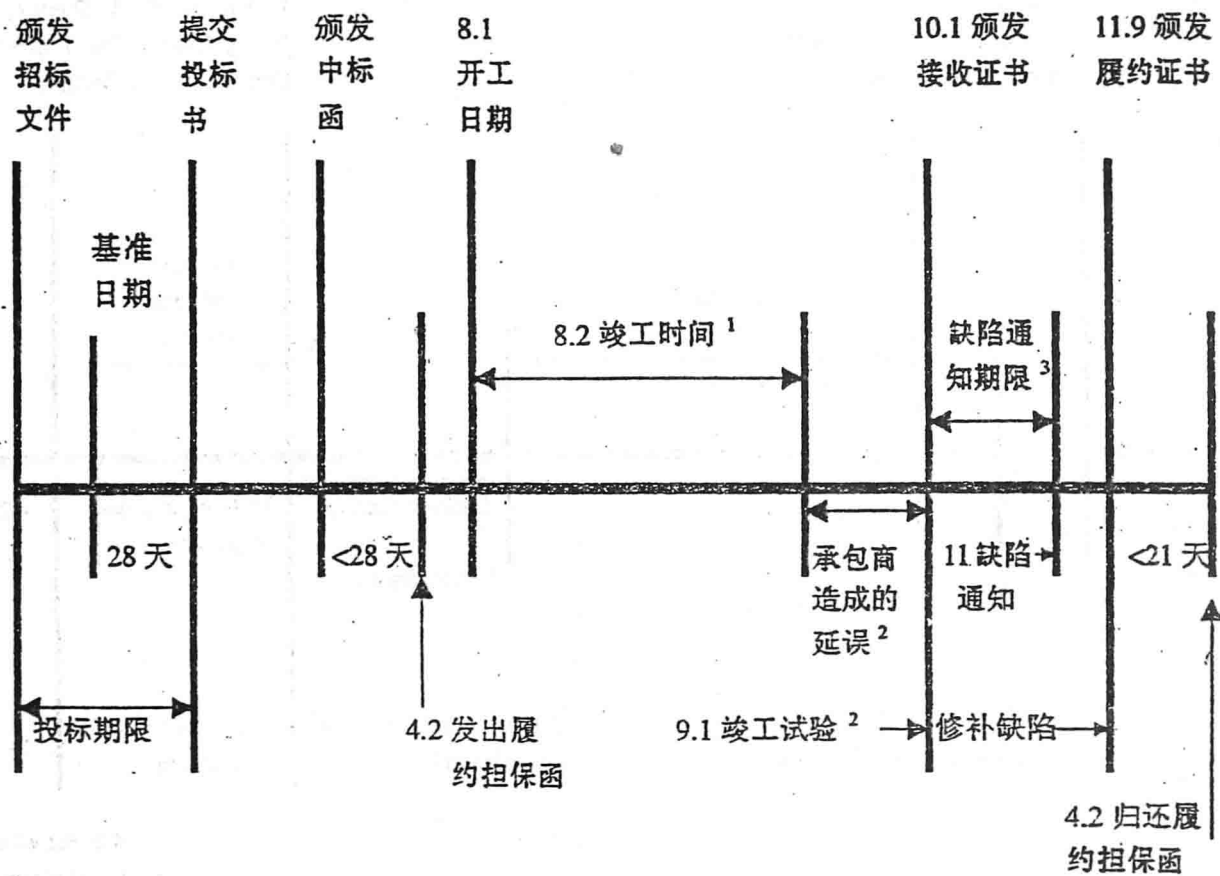
教材中附有部分课后思考题与投标函、合同协议书和争端裁决协议书的格式范本, 仅供学习时参考。

编写中难免出现错误和不足, 敬请谅解和指正。



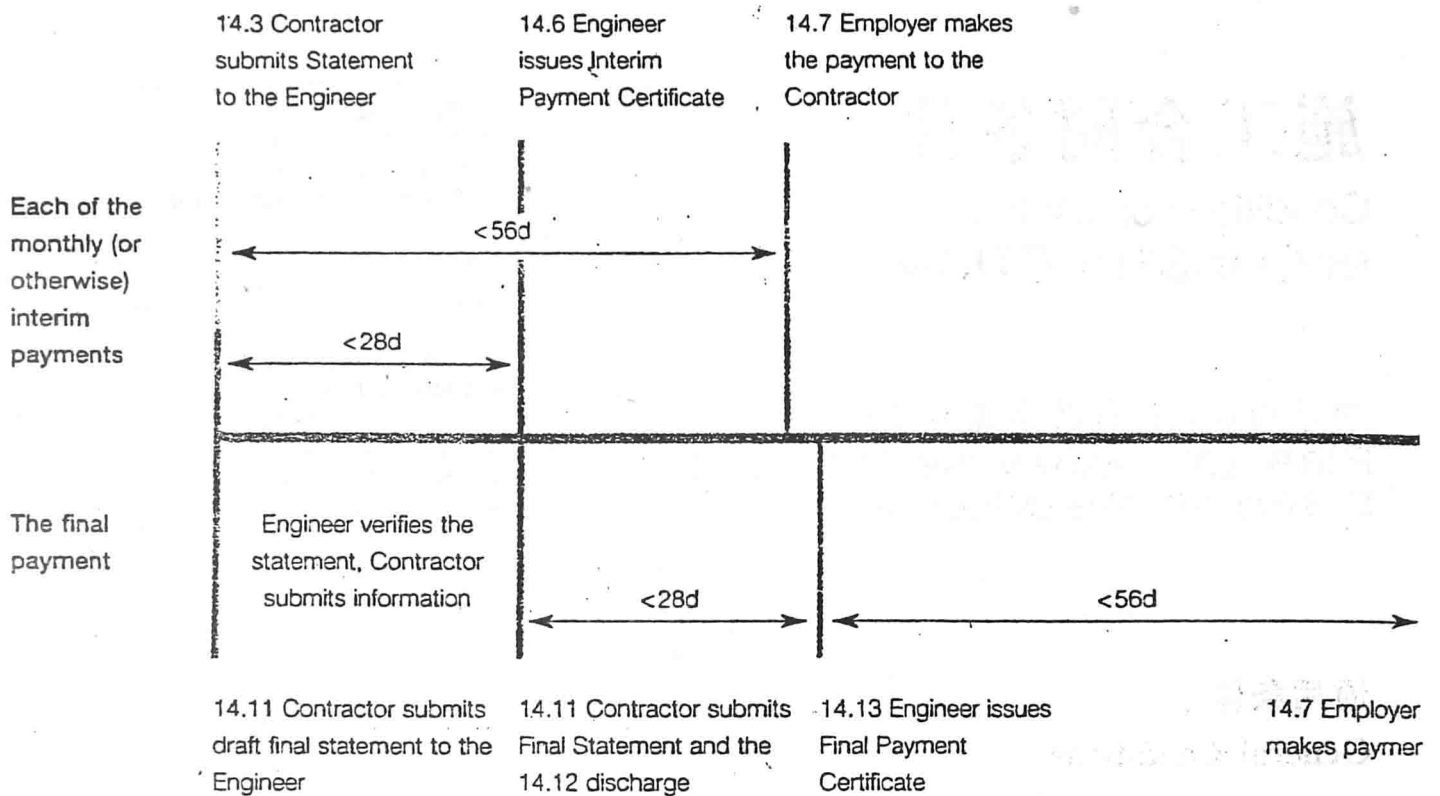
Typical sequence of Principal Events during Contracts for Construction

1. The Time for Completion is to be stated (in the Appendix to Tender) as a number of days, to which is added any extensions of time under Sub-Clause 8.4.
2. In order to indicate the sequence of events, the above diagram is based upon the example of the Contractor failing to comply with Sub-Clause 8.2.
3. The Defects Notification Period is to be stated (in the Appendix to Tender) as a number of days, to which is added any extensions under Sub-Clause 11.3.

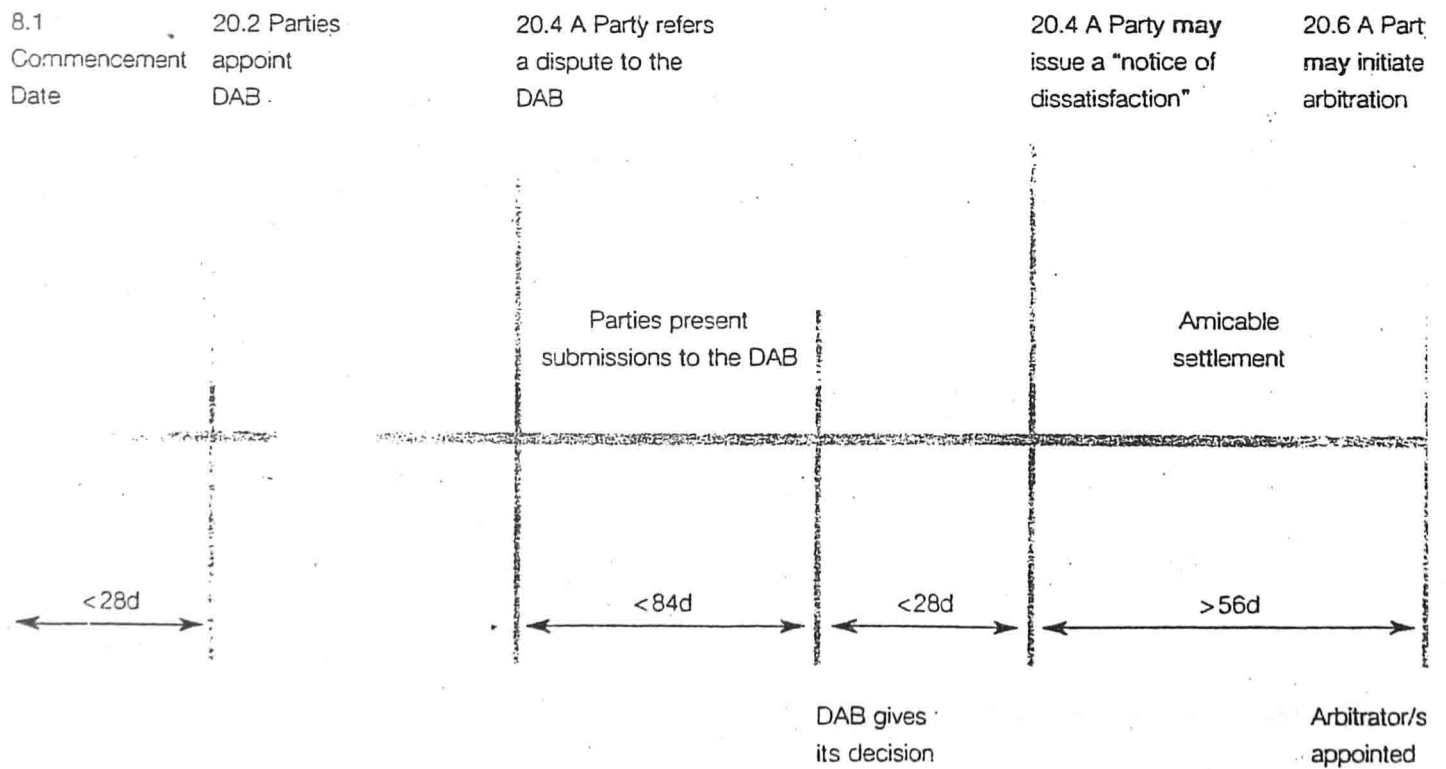


施工合同中主要事项的典型顺序

1. 竣工时间(在投标书附录中)用天数表示, 加上任何根据第 8.4 款规定的延长期。
2. 为了表示事项的顺序, 上图系按承包商未能遵守第 8.2 款的规定为例。
3. 缺陷通知期限(在投标书附录中)用天数表示, 加上任何根据第 11.3 款规定的延长期。



Typical sequence of Payment Events envisaged in Clause 14



Typical sequence of Dispute Events envisaged in Clause 20

通用条件
GENERAL CONDITIONS

施工合同条件

Conditions of Contract
for CONSTRUCTION

用于由雇主设计的建筑和工程
FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

专用条件编写指南
GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS

投标函、合同协议书和
争端裁决协议书格式
FORMS OF LETTER OF
TENDER, CONTRACT
AGREEMENT AND
DISPUTE ADJUDICATION
AGREEMENT

通用条件

General Conditions

国际咨询工程师联合会

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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1.1.1.1	Contract	1.1.5.3	Materials
1.1.1.2	Contract Agreement	1.1.2.1	Party
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General Conditions

1 General Provisions

1.1

Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1

The Contract

1.1.1.1 "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "Contract Agreement" means the contract agreement (if any) referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 "Letter of Tender" means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 "Specification" means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.1.1.6 "Drawings" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

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 the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 "Tender" means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 "Appendix to Tender" means the completed pages entitled appendix to tender which are appended to and form part of the Letter of Tender.

1.1.1.10 "Bill of Quantities" and "Daywork Schedule" mean the documents so named (if any) which are comprised in the Schedules.

1.1.2
Parties and Persons

- 1.1.2.1 "Party" means the Employer or the Contractor, as the context requires.
- 1.1.2.2 "Employer" means the person named as employer in the Appendix Tender and the legal successors in title to this person.
- 1.1.2.3 "Contractor" means the person(s) named as contractor in the Letter Tender accepted by the Employer and the legal successors in title to the person(s).
- 1.1.2.4 "Engineer" means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Appendix 1 Tender, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [*Replacement of the Engineer*]
- 1.1.2.5 "Contractor's Representative" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.
- 1.1.2.6 "Employer's Personnel" means the Engineer, the assistants referred to in Sub-Clause 3.2 [*Delegation by the Engineer*] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer's Personnel.
- 1.1.2.7 "Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff labour and other employees of the Contractor and of each Subcontractor and any other personnel assisting the Contractor in the execution of the Works
- 1.1.2.8 "Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 "DAB" means the person or three persons so named in the Contract, or other person(s) appointed under Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*] or Sub-Clause 20.3 [*Failure to Agree Dispute Adjudication Board*]
- 1.1.2.10 "FIDIC" means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.

1.1.3
Dates, Tests, Periods
and Completion

- 1.1.3.1 "Base Date" means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 "Commencement Date" means the date notified under Sub-Clause 8.1 [*Commencement of Works*].
- 1.1.3.3 "Time for Completion" means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Appendix to Tender (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Commencement Date.
- 1.1.3.4 "Tests on Completion" means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried