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## AN INTRODUCTION TO FIDIC



**International Federation of Consulting Engineers**  
The Global Voice of Consulting Engineers

## FIDIC CONTRACT 1999 COMPARISON

Issue	Red Book 1999	Yellow Book 1999	Silver Book 1999
REGULATION AND WORKS	<p>Recommended for building and engineering works designed by the Employer or his representative, the Engineer.</p> <p>Under the usual arrangements for this type of contract, the Contractor constructs the works in accordance with a design provided by the Employer. However, the works may include some elements of Contractor designed civil, mechanical, electrical and/or construction works.</p>	<p>Recommended for the provision of electrical and/or mechanical plant and for the design and execution of building or engineering works.</p> <p>Under the usual arrangements for this type of contract, the Contractor designs and provides, in accordance with the Employer's requirements, plant and/or other works; which may include any combination of civil, mechanical, electrical and/or construction works.</p>	<p>Suitable for the provision on a turnkey basis of a process or power plant, of a factory or similar facility, or of an infrastructure project or other type of development, where</p> <ul style="list-style-type: none"> <li>▪ A higher degree of certainty of final price and time is required, and</li> <li>▪ The Contractor takes total responsibility for the design and execution of the project, with little involvement of the Employer.</li> </ul> <p>Under the usual arrangements for turnkey projects, the Contractor carries out all the Engineering, Procurement and Construction (EPC): providing a fully equipped facility, ready for operation (at the "turn of the key").</p>
CONTRACT ADMINISTRATION	<p>The Contract is administered by the Engineer (appointed by the Employer) who shall determine any claim for extension of time and additional payment, certify payments and issue taking over and performance certificates.</p>	<p>The Contract is administered by the Engineer (appointed by the Employer) who shall determine any claim for extension of time and additional payment, certify payments and issue taking over and performance certificates.</p>	<p>There is No Engineer. The Contract is administered directly by the Employer or its representative who endeavours to reach agreement with the Contractor on each claim. The Introductory Note to the Silver Book emphasises that if the Contractor is to achieve the certainty of time and price stipulated, then the involvement of the Employer must be limited to a minimum during construction.</p>

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<b>RISKS ALLOCATION</b>	<p>Risks are allocated on a fair and equitable basis taking account of such matters as insurability, and each party's ability to foresee, and mitigate the effect of, the circumstances relevant to each risk.</p> <p>There are a number of key risks that the Employer retains, for example:</p> <ol style="list-style-type: none"> <li>1. Errors in the Setting Out data (Sub-Clause 4.7);</li> <li>2. Site data (Sub-Clause 4.10);</li> <li>3. "Unforeseeable" Site risks (Sub-Clause 4.12)</li> </ol> <p>As a result, the tender time can be relatively short.</p>	<p>Risks are allocated on a fair and equitable basis taking account of such matters as insurability, and each party's ability to foresee, and mitigate the effect of, the circumstances relevant to each risk.</p> <p>There are a number of key risks that the Employer retains, for example:</p> <ol style="list-style-type: none"> <li>1. Errors in the Setting Out data (Sub-Clause 4.7);</li> <li>2. Site data (Sub-Clause 4.10);</li> <li>3. "Unforeseeable" Site risks (Sub-Clause 4.12)</li> </ol> <p>As a result, the tender time can be relatively short.</p>	<p>A majority of risks is allocated to the Contractor under the Contract, including any errors in:</p> <ol style="list-style-type: none"> <li>1. Errors in the Setting Out data (Sub-Clause 4.7);</li> <li>2. Site data (Sub-Clause 4.10);</li> <li>3. Unforeseeable difficulties or costs (Sub-Clause 4.12)</li> </ol> <p>The Contractor is expected to:</p> <ul style="list-style-type: none"> <li>▪ Price these risks; and/or</li> <li>▪ Carryout extensive due diligence to mitigate risks.</li> </ul> <p>A longer period for preparation of a tender is therefore usually required, in particular to inspect the Site and examine data hydrological and subsurface data and also to scrutinise the Employer's Requirements.</p>
<b>DESIGN – ERRORS IN THE EMPLOYER'S REQUIREMENTS</b>	<p>The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.</p> <p>Except to the extent specified in the Contract, the Contractor</p> <ul style="list-style-type: none"> <li>▪ Shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and</li> </ul>	<p>The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by qualified designers who are engineers who comply with the criteria (if any) stated in the Employer's Requirements.</p> <p>Unless otherwise stated in the Contract, the Contractor shall submit to the Engineer for consent the name and particulars of each proposed designer and design Subcontractor.</p> <p>The Contractor warrants that he, his designers and design Subcontractors have the</p>	<p>The Contractor shall be deemed to have scrutinised, prior to the Base Date, the Employer's Requirements (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works and for the accuracy of such Employer's Requirements (including design criteria and calculations), except as stated below.</p> <p>The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of</p>

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	<ul style="list-style-type: none"> <li>▪ Shall not otherwise be responsible for the design or specification of the Permanent Works.</li> </ul> <p>The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods, which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer. If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:</p> <ul style="list-style-type: none"> <li>▪ The Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;</li> <li>▪ These Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs.</li> <li>▪ The Contractor shall be responsible for this part and it shall, when the Works are</li> </ul>	<p>experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times, until the expiry date of the relevant Defects Notification Period.</p> <p>Upon receiving notice under Sub-Clause 8.1 [Commencement of Works], the Contractor shall scrutinise the Employer's Requirements (including design criteria and calculations) and the items of reference mentioned in Sub Clause 4.7 [Setting Out].</p> <p>Within the period stated in the Appendix to Tender, calculated from the Commencement Date, the Contractor shall give notice to the Engineer of any error, fault or other defect found in the Employer's Requirements or these items of reference.</p> <p>After receiving this notice, the Engineer shall determine whether Clause 13 [Variations and Adjustments] shall be applied, if so, give notice to the Contractor accordingly.</p> <p>If and to the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error, fault or other defect when examining the Site and the Employer's Requirements before submitting the Tender, the Time for Completion shall not be extended and the Contract Price shall not be adjusted.</p>	<p>accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.</p> <p>However, the Employer shall be responsible for the correctness of the following portions of the Employer's Requirements and of the following data and information provided by (or on behalf of) the Employer:</p> <ul style="list-style-type: none"> <li>▪ Portions, data and information which are stated in the Contract as being immutable or the responsibility of the Employer,</li> <li>▪ Definitions of intended purposes of the Works or any parts thereof,</li> <li>▪ Criteria for the testing and performance of the completed Works, and</li> <li>▪ Portions, data and information which cannot.</li> </ul>

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	<p>completed, be fit for such purposes for which the part is intended as are specified in the Contract; and</p> <ul style="list-style-type: none"> <li>▪ Prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the “as-built” documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking over under Sub-Clause 10.1 [<i>Taking Over of the Works and Sections</i>] until these documents and manuals have been submitted to the Engineer.</li> </ul>		
<p style="writing-mode: vertical-rl; transform: rotate(180deg);"><b>CONTRACT PRICE</b></p>	<p>Unless otherwise stated in the Particular Conditions:</p> <ul style="list-style-type: none"> <li>▪ The Contract Price shall be agreed or determined under Sub-Clause 12.3 and be subject to adjustments in accordance with the Contract.</li> <li>▪ 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</li> </ul>	<p>Unless otherwise stated in the Particular Conditions:</p> <ul style="list-style-type: none"> <li>▪ The Contract Price shall be the lump sum accepted contract amount and be subject to adjustments in accordance with the Contract;</li> <li>▪ 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</li> </ul>	<p>Unless otherwise stated in the Particular Conditions:</p> <ul style="list-style-type: none"> <li>▪ Payment for the Works shall be made on the basis of the lump sum Contract Price, subject to adjustments in accordance with the Contract;</li> <li>▪ 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</li> </ul>

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	<p>costs except as stated in Sub-Clause 13.7 [<i>Adjustments for Changes in Legislation</i>];</p> <ul style="list-style-type: none"> <li>▪ 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:               <ol style="list-style-type: none"> <li>1. of the Works which the Contractor is required to execute, or</li> <li>2. For the purposes of Clause [<i>Measurement and Evaluation</i>];</li> </ol> </li> <li>▪ 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.</li> </ul> <p>Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.</p>	<p>costs, except as stated in Sub-Clause 13.7 [<i>Adjustments for Changes in Legislation</i>]</p> <ul style="list-style-type: none"> <li>▪ Any quantities which may be set out in a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the Works which the Contractor is required to execute;</li> <li>▪ Any quantities or price data, which may be set out in a Schedule, shall be used for the purposes stated in the Schedule and may be inapplicable for other purposes. However, if any part of the Works is to be paid according to quantity supplied or work done, the provisions for measurement and evaluation shall be as stated in the Particular Conditions. The Contract Price shall be determined accordingly, subject to adjustments in accordance with the Contract.</li> </ul>	<p>costs, except as stated in Sub Clause 13.7.</p>

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<b>PAYMENT</b>	<p>The Employer shall make an advance payment, as an interest-free loan for mobilisation, when the Contractor submits a guarantee. Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data (or Appendix to Tender), this Sub Clause shall not apply.</p> <p>The Engineer shall issue an Interim Payment Certificate for the first instalment after:</p> <ul style="list-style-type: none"> <li>▪ Receiving a Statement and</li> <li>▪ after the Employer Receives:               <ol style="list-style-type: none"> <li>1. The Performance Security</li> <li>2. a guarantee in amounts and currencies equal to the advance payment</li> </ol> </li> </ul> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ The instalments quoted in this schedule of payments</li> </ul>	<p>The Employer shall make an advance payment, as an interest-free loan for mobilisation, when the Contractor submits a guarantee. Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data (or Appendix to Tender), this Sub Clause shall not apply.</p> <p>The Engineer shall issue an Interim Payment Certificate for the first instalment after:</p> <ul style="list-style-type: none"> <li>▪ Receiving a Statement and</li> <li>▪ after the Employer Receives:               <ol style="list-style-type: none"> <li>1. The Performance Security</li> <li>2. a guarantee in amounts and currencies equal to the advance payment</li> </ol> </li> </ul> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>▪ The instalments quoted in this schedule of payments</li> </ul>	<p>The Employer shall make an advance payment, as an interest-free loan for mobilization and design, when the Contractor submits a guarantee. Employer shall pay the first instalment after receiving</p> <ol style="list-style-type: none"> <li>1. A Statement;</li> <li>2. The Performance Security</li> </ol> <p>The Contractor shall submit a Statement in six copies to the Employer after the end of the period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents.</p> <p>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. 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:</p> <ul style="list-style-type: none"> <li>▪ The instalments quoted in the Schedule of Payments shall be the estimated contract</li> </ul> <p>If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if</p>

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	<p>shall be the estimated contract values.</p> <ul style="list-style-type: none"> <li>▪ If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which the Schedule of Payments was based, then the Engineer may proceed 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.</li> </ul> <p>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.</p> <p>The first estimate shall be submitted within 42 days after the Commencement Date.</p> <p>Revised estimates shall be submitted at quarterly intervals, until the Taking Over Certificate has been issued for the Works.</p>	<p>shall be the estimated contract values.</p> <ul style="list-style-type: none"> <li>▪ If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which the Schedule of Payments was based, then the Engineer may proceed 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.</li> </ul> <p>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.</p> <p>The first estimate shall be submitted within 42 days after the Commencement Date.</p> <p>Revised estimates shall be submitted at quarterly intervals, until the Taking Over Certificate has been issued for the Works.</p>	<p>actual progress is found to be less than that on which the Schedule of Payments was based, then the Employer may proceed 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.</p> <p>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.</p> <p>The first estimate shall be submitted within 42 days after the Commencement Date.</p> <p>Revised estimates shall be submitted at quarterly intervals, until the Taking Over Certificate has been issued for the Works.</p>
<p><b>EXTENSION OF TIME &amp; ASSOCIATED COSTS</b></p>	<p>Various rights for the Contractor to claim Extension of Time OR Associated Cost under the Contract for errors:</p> <ul style="list-style-type: none"> <li>▪ In the Setting Out data (Sub-Clause 4.7)</li> </ul>	<p>Various rights for the Contractor to claim Extension of Time OR Associated Cost under the Contract for errors:</p> <ul style="list-style-type: none"> <li>▪ In the Setting Out data (Sub-Clause 4.7)</li> </ul>	<p>The Contractor shall be entitled to an EOT if (and to the extent that) completion for the purposes of Taking Over of the Works and Sections is or will be delayed by any of the following causes:</p>



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	<ul style="list-style-type: none"> <li>▪ In the Site data (Sub-Clause 4.10)</li> <li>▪ Unforeseen Site risks (Sub-Clause 4.12)</li> <li>▪ Others.</li> </ul>	<ul style="list-style-type: none"> <li>▪ In the Site data (Sub-Clause 4.10)</li> <li>▪ Unforeseen Site risks (Sub-Clause 4.12)</li> <li>▪ Others.</li> </ul>	<ul style="list-style-type: none"> <li>▪ A Variation (unless an adjustment to the Time for Completion has been agreed under Variation Procedure;</li> <li>▪ A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions;</li> <li>▪ Any delay, impediment or prevention caused by (or attributable to) the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.</li> </ul>
<b>TESTS ON COMPLETION</b>	<p>The Contractor shall carry out the Tests on Completion. The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion.</p> <p>Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.</p> <p>In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the</p>	<p>The Contractor shall carry out the Tests on Completion. The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion.</p> <p>Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.</p> <p>Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:</p> <p>a. PRE-COMMISSIONING TESTS</p> <p>which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each</p>	<p>The Contractor shall carry out the Tests on Completion. The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion.</p> <p>Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.</p> <p>Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:</p> <p>a. PRE-COMMISSIONING TESTS</p> <p>which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each</p>

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	<p>results of these Tests to the Engineer.</p> <p>If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.</p> <p>If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.</p> <p>Failure to pass tests If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub- Clause 9.3 [Retesting], the Engineer shall be entitled to:</p> <ul style="list-style-type: none"> <li>▪ Order further repetition of Tests on Completion under Sub-Clause 9.3;</li> <li>▪ If the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the</li> </ul>	<p>item of Plant can safely undertake the next stage,</p> <p>b. COMMISSIONING TESTS</p> <p>which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and</p> <p>c. TRIAL OPERATION</p> <p>which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.</p> <p>During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Engineer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements and with the Schedule of Guarantees.</p> <p>Trial operation shall not constitute a taking-over under Clause 10 [Employer's Taking Over].</p> <p>Unless otherwise stated in the Particular Conditions, any product produced by the Works during trial operation shall be the property of the Employer. In considering the results of the Tests on Completion, the Engineer shall make allowances</p>	<p>item of Plant can safely undertake the next stage,</p> <p>b. COMMISSIONING TESTS</p> <p>which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and</p> <p>c. TRIAL OPERATION</p> <p>which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.</p> <p>During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Engineer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements and with the Schedule of Guarantees.</p> <p>Trial operation shall not constitute a taking-over under Clause 10 [Employer's Taking Over].</p> <p>Unless otherwise stated in the Particular Conditions, any product produced by the Works during trial operation shall be the property of the Employer. In considering the results of the Tests on Completion, the Engineer shall make allowances</p>

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	<p>same remedies as are provided in subparagraph (c) of Sub Clause 11.4 [<i>Failure to Remedy Defects</i>]; or</p> <ul style="list-style-type: none"> <li>▪ Issue a Taking-Over Certificate, if the Employer so requests.</li> </ul> <p>But in this case, the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be</p> <ul style="list-style-type: none"> <li>▪ Agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued;</li> <li>▪ Determined and paid under Sub-Clause 2.5 [<i>Employer's Claims</i>] and Sub Clause 3.5 [<i>Determinations</i>]</li> </ul>	<p>for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion described in subparagraph (a), (b) or (c), the Contractor shall submit a certified report of the results of these Tests to the Engineer.</p> <p>If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.</p> <p>If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.</p> <p>Failure to pass tests If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [<i>Retesting</i>], the Engineer shall be entitled to:</p>	<p>for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed each of the Tests on Completion described in subparagraph (a), (b) or (c), the Contractor shall submit a certified report of the results of these Tests to the Engineer.</p> <p>If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.</p> <p>If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.</p> <p>Failure to pass tests If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [<i>Retesting</i>], the Engineer shall be entitled to:</p>

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		<ul style="list-style-type: none"> <li>▪ Order further repetition of Tests on Completion under Sub-Clause 9.3;</li> <li>▪ If the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in subparagraph (c) of Sub-Clause 11.4[<i>Failure to Remedy Defects</i>];</li> <li>▪ Issue a Taking-Over Certificate.</li> </ul> <p>But in this case, the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract: the Employer may require the reduction to be</p> <ul style="list-style-type: none"> <li>▪ Agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued;</li> <li>▪ Determined and paid under Sub-Clause 2.5 [<i>Employer's Claims</i>] and Sub Clause 3.5 [<i>Determinations</i>].</li> </ul>	<ul style="list-style-type: none"> <li>▪ Order further repetition of Tests on Completion under Sub-Clause 9.3;</li> <li>▪ If the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in subparagraph (c) of Sub-Clause 11.4[<i>Failure to Remedy Defects</i>];</li> <li>▪ Issue a Taking-Over Certificate.</li> </ul> <p>But in this case, the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract: the Employer may require the reduction to be</p> <ul style="list-style-type: none"> <li>▪ Agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued;</li> <li>▪ Determined and paid under Sub-Clause 2.5 [<i>Employer's Claims</i>] and Sub Clause 3.5 [<i>Determinations</i>].</li> </ul>

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<b>TAKING-OVER</b>	<p>Except as stated in Sub-Clause 9.4 [<i>Failure to Pass Tests on Completion</i>], the Works shall be taken over by the Employer when</p> <ul style="list-style-type: none"> <li>▪ The Works have been completed in accordance with the Contract, including the matters described in Sub Clause 8.2 [<i>Time for Completion</i>] and except as allowed in subparagraph (a) below, and</li> <li>▪ A Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.</li> </ul> <p>The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor’s opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking Over Certificate for each Section.</p> <p>The Engineer shall, within 28 days after receiving the Contractor’s application:</p> <ul style="list-style-type: none"> <li>▪ Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use</li> </ul>	<p>Except as stated in Sub-Clause 9.4 [<i>Failure to Pass Tests on Completion</i>], the Works shall be taken over by the Employer when</p> <ul style="list-style-type: none"> <li>▪ The Works have been completed in accordance with the Contract, including the matters described in Sub Clause 8.2 [<i>Time for Completion</i>] and except as allowed in subparagraph (a) below, and</li> <li>▪ A Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.</li> </ul> <p>The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor’s opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking Over Certificate for each Section.</p> <p>The Engineer shall, within 28 days after receiving the Contractor’s application:</p> <ul style="list-style-type: none"> <li>▪ Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use</li> </ul>	<p>Except as stated in Sub-Clause 9.4 [<i>Failure to Pass Tests on Completion</i>], the Works shall be taken over by the Employer when</p> <ul style="list-style-type: none"> <li>▪ The Works have been completed in accordance with the Contract, including the matters described in Sub Clause 8.2 [<i>Time for Completion</i>] and except as allowed in subparagraph (a) below, and</li> <li>▪ A Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.</li> </ul> <p>The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor’s opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking Over Certificate for each Section.</p> <p>The Engineer shall, within 28 days after receiving the Contractor’s application:</p> <ul style="list-style-type: none"> <li>▪ Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the</li> </ul>

Issue	Red Book 1999	Yellow Book 1999	Silver Book 1999
	<p>of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied)</p> <ul style="list-style-type: none"> <li>▪ Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub Clause.</li> </ul> <p>If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.</p> <p>The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works. The Employer shall not 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. However, if the Employer does use any part of the Works before the Taking Over Certificate is issued:</p>	<p>of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied)</p> <ul style="list-style-type: none"> <li>▪ Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub Clause.</li> </ul> <p>If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.</p> <p>The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works. The Employer shall not 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. However, if the Employer does use any part of the Works before the Taking Over Certificate is issued:</p>	<p>use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied)</p> <ul style="list-style-type: none"> <li>▪ Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub Clause.</li> </ul> <p>If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.</p> <p>Parts of the Works (other than Sections) shall not be taken over or used by the Employer, except as may be stated in the Contract or as may be agreed by both Parties.</p>

Issue	Red Book 1999	Yellow Book 1999	Silver Book 1999
	<ul style="list-style-type: none"> <li>▪ The part which is used shall be deemed to have been taken over as from the date on which it is used,</li> <li>▪ The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and</li> <li>▪ If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.</li> </ul> <p>After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion.</p> <p>The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.</p> <p>If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall</p> <ul style="list-style-type: none"> <li>▪ Give notice to the Engineer;</li> <li>▪ Be entitled to 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After this notice, the</li> </ul>	<ul style="list-style-type: none"> <li>▪ The part which is used shall be deemed to have been taken over as from the date on which it is used,</li> <li>▪ The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and</li> <li>▪ If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.</li> </ul> <p>After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion.</p> <p>The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.</p> <p>If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall</p> <ul style="list-style-type: none"> <li>▪ Give notice to the Engineer;</li> <li>▪ Be entitled to 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After this notice, the</li> </ul>	

Issue	Red Book 1999	Yellow Book 1999	Silver Book 1999
	Engineer (3.5) to agree or determine this Cost and profit.	Engineer (3.5) to agree or determine this Cost and profit.	



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