FIDIC Users' Guide

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Third edition

**A Practical Guide to the Red, Yellow,
MDB Harmonised and Subcontract
Books**

Brian Barr and Leo Grutters

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Foreword by Gwyn Owen

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Foreword

It gives me great pleasure to write a few words here for you to consider before you read this excellent third edition. My friend and colleague Brian Totterdill who passed away in 2011 after he had also completed and published its second edition initially wrote the FIDIC Users' Guide. It is a sign of the times that contract forms, precedent and practice develop so quickly that there is a need for a third edition of what has become a standard reference guide. Who better to undertake the work of such a publication than the present authors Brian Barr and Leo Grutters? Both authors are seasoned practitioners in the field of contract management and administration and also in the world of dispute resolution in its many forms. They are both industry recognised within their fields, are FIDIC President Listed and have taken on the significant role of the development of this new edition of the book, no doubt knowing that from somewhere Brian Totterdill is looking over their shoulder with a critical, but approving gaze.

The FIDIC form of contract is one, if not the, leading form of contract used on internationally funded development projects throughout the world. It is used by a cross section of industry, from developing nations through to sophisticated promoters, who all need a reliable, industry proven form of contract incorporating logical risk allocation leading to certainty in both time and cost. FIDIC has taken a global lead in the development of various forms of contract which provide such a platform and it is inevitable that these contract forms continue to be developed and modified as required by the industry and its users.

The first and second edition of the book guided the readers through the practical aspects of the use of the various standard FIDIC forms of contract and provided guidance to the understanding of the various clauses and provisions found therein. The books followed the seemingly simple presentation of language found in the 1999 suite of FIDIC contracts and enabled the reader, be they legally trained or not, to gain a better understanding of the meaning behind those simple words. However, a few years is a long time in the development of legal understanding and various practitioners have tested those standard forms of contract by litigation and arbitration and, together with their ever widening use within the development industry, a need has been created for the various standard forms to be amended and modified to reflect the progression of that legal understanding. Indeed, the need for further and more focused forms of contract has also arisen and FIDIC has revised, or is in the process of revising, the currently used forms and has published new forms of contract to fulfil such needs.

The present authors, as they are practitioners in this very field, have their fingers on the pulse of such changes. They have accordingly revised and edited the earlier editions of the FIDIC User's Guide and have produced an excellent third edition which incorporates the current industry's thinking and understanding of the FIDIC terms and conditions. They have also incorporated into the book the new FIDIC forms of contract, making the book a more all-encompassing volume for readers. This third edition contains an updated view of the meaning and understanding of the various clauses found within the FIDIC suite of contracts while maintaining the previous editions' layout format. New and additional flow charts have been incorporated which make the book a thorough source of materials for those who need a ready reference guide on their bookshelves.

As with Brian Totterdill's earlier editions, this third edition provides a thorough and up-to-date practical and reliable reference book for users of the various FIDIC forms of contract. I have no doubt that this new edition will be used by many practitioners throughout the world and will provide a uniform understanding of the administration of good practice.

Gwyn Owen

*Chartered Arbitrator, Adjudicator & Mediator,
Past President DRBF*

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The authors would also like to extend their appreciation to Enrico Vink and François Baillon of FIDIC for their assistance and support concerning the required copyrights, without which this book would not have been possible.

Preface to the third edition

The third edition comes at a time where the international construction industry is coming to terms with the loss of one of its great contributors. Brian W. Totterdill, the author and creator of the first and second edition of this book sadly passed away, leaving behind a legacy of great importance that will stretch over many years. His books on dispute resolution for the international construction industry are widely known and accepted and have become the standard of reference for many practitioners and users.

Not only is this third edition a welcome update reflecting current construction market requirements, it is also a tribute to Brian W. Totterdill in that his work is continued, so that the industry may experience the benefits of his life's passion and dedication for many more years.

We, Brian Barr and Leo Grutters, as authors of this third edition, are fully aware of our responsibility in preserving that legacy. Nevertheless, and in keeping with current construction industry needs and requirements, we have tried not to just copy from the previous editions, but to provide additional valuable information, facts and figures through in-depth research and to discuss in detail some of the more controversial topics the industry has raised since publication of the last edition. Our combined practical experience in excess of 70 years is used to produce a work of reference that we are convinced will serve the industry for years to come.

This third edition has been extended to include a more in-depth analysis of the Multilateral Development Banks Harmonised *Conditions of Contract for Construction*, commonly known as the MDB Edition or PNK Book as it has come to be known as well. This Contract has been prepared in conjunction with the World Bank and a group of Multilateral Development Banks, and it is understood that all of these banks adopt this edition of the FIDIC document in their standard bidding documents. A first version of the General Conditions was released to participating banks in May 2005, followed by an amended second version in March 2006 and a third amended version in June 2010. The MDB includes some significant changes to the *Conditions of Contract for Construction* and is reviewed in Part 2 of this book.

Over the years, the use of the FIDIC 1999 suite of Contracts has seen a steady increase in use. New contract forms have been published such as the 2008 *Conditions of Contract for Design, Build and Operate Projects*, more commonly referred to as the DBO or GOLD Book. Another new

contract was published in 2011: *Conditions of Subcontract for Construction for building and engineering works designed by the Employer* (2011). This latter Contract form is specifically designed for use with the *Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer* (1999), or commonly known as the 'RED Book'. The interaction between the RED Book and the Subcontract or SUB Book is reviewed in Part 4.

Abbreviations

DAB	Dispute Adjudication Board
YLW	Conditions of Contract for Plant and Design Build for Electrical and Mechanical Plant, and for Building and Engineering Works, Designed by the Contractor (1999)
PNK	Conditions of Contract for Construction MDB Harmonised Edition for Building and Engineering Works Designed by the Employer (2010)
SUB	Conditions of Sub Contract for Construction for Building and Engineering Works Designed by the Employer (2011)
SLV	Conditions of Contract for EPC/Turnkey Projects (1999)
GLD	Conditions of Contract for Design, Build and Operate Projects (2008)
MDB	Multilateral Development Banks
DB	Dispute Board
FIDIC	Fédération Internationale des Ingénieurs Conseils
RED	Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (1999)
ICE	Institution of Civil Engineers (UK)
ICC	International Chamber of Commerce
DBF	Dispute Board Federation
BoQ	Bill of Quantities

About the authors

Brian Barr is a Chartered Civil Engineer and Adjudicator with over forty years of experience in the public and private sectors specialising in the management of International Development Construction projects with particular emphasis on the avoidance and resolution of disputes. During his career he has been involved in the procurement, administration and supervision of major infrastructure works particularly development projects supported by International Financing Institutions.

He is a Fellow of three major professional bodies – The Institution of Civil Engineers and The Institution of Highways and Transportation in the United Kingdom, and The Dispute Board Federation in Switzerland. His name is also included on the FIDIC President's List of Dispute Adjudicators.

He has lived and worked in many developing countries in Africa, Central/South/South-East Asia, Eastern Europe, the Caribbean and Central America for more than twenty years. During this period he has held key positions including; Engineer, Engineer's Representative, Project Manager, Representative on Dispute Boards, Dispute Review Expert, Dispute Advisor, Claims Advisor, Technical Auditor.

Leo Grutters is a Civil Engineer and a Dispute Resolution Expert with nearly 30 years of professional experience. He holds an MBA and is a Fellow of the Chartered Institute of Arbitrators. As a Member of FIDIC's President's List of Approved Dispute Adjudicators he has been involved as an independent neutral expert in many large prestigious international engineering projects involving such wide-ranging sectors as roads, power generation and distribution, off-shore, marine, renewable energies, etc. He is a forensic analyst focused on the logical and fair resolution to contractual disputes. Due to his extensive participation in international contractual dispute resolution procedures such as Adjudication, Dispute Boards and Arbitration, he is a project-focused expert that understands the interaction between complex engineering methodologies and the unavoidable legal and commercial implications when seen in a contractual environment. He strongly believes in a common sense approach and will always strive to achieve the optimum result acceptable by all involved. He also regularly lectures

on Dispute Resolution Methodologies, Proactive Contract Administration Systems and Procedures and he is a regular speaker at related international events. He also routinely conducts training and coaching events on the entire FIDIC Rainbow Suite of Contracts, as well as other construction management related topics.