

MDA PRESENTS



FIRST AID FOR CONTRACTS



First Edition – Jan 2021

NEW EDITION FIDIC GREEN BOOK

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The Green Book is FIDIC's short form of contract. The current edition forms part of the Rainbow Suite dating back to 1999. Release of the revised version expected later this year brings with it several updates and new inclusions aimed at making it more comprehensive but still keeping the contract concise and suitable for its target market.

The Green book is typically used for engineering and building works of relatively small capital value or higher value contracts which entails fairly straightforward or repetitive works with a relatively short duration. USD 500 0000/6 months was initially considered as a reasonable limit on capital value and duration. However, the World Bank has suggested its use for contract values up to USD 10 million. FIDIC believes that this is still not a true indication of its suitability as according to its statistics, 18% of the Green Books use has reportedly been for projects in

excess of USD 10 million.

The first edition Green book comprises a simple 15 clause format. The clauses are short and easy to understand - design can be carried out by either party. It excludes the express requirement for a third person (Engineer) to undertake any contract administration.

Its dispute resolution provisions are more basic than other FIDIC contracts. There is no provision for amicable dispute resolution nor a standing Dispute Adjudication Board, but an adjudicator. Also, perhaps due to the smaller value of contract there is no reference to ICC arbitration. The parties instead decide the applicable rules and other arrangements in the appendix. Apart from the appendix, the Contract includes Rules for Adjudication, an Adjudicator's Agreement and guidance notes, but lacks Particular Conditions.

Pricing is also a matter of choice – lump sum, remeasurement, as well as a cost reimbursable option.

The second edition (2021) contains several new inclusions (albeit these are familiar FIDIC Conditions):

- Professional Indemnity Insurance
- Assignment
- Intellectual Property
- Confidentiality
- Limits on liability
- Site data
- Employer's financial arrangements
- Inspection/Testing
- Commissioning / take over;
- Taking over part of the works
- Responsibility for subcontracting
- Claims and variation have now been separated
- Defects/Defects notification period
- Indemnities

The role of an Engineer (however to act “neutrally”) has been introduced for contract administration purposes. These provisions align with the 1999 Red and Yellow Books. Even in its revised form, the new Green Book does not require extensive contract administration and management resources.

The new version also introduces an Advance Warning provision where either party is to notify the other and the Engineer and the Engineer to advise the parties of any known probable event which may delay or disrupt the execution of the Works or increase the Contract Price.

The level of responsibility on the Contractor for its design has now been enhanced and with this a

corresponding requirement for Professional Indemnity cover by the Contractor to cover “any liability arising out of any act, error or omission by the Contractor in carrying out its design obligations”.

Also new is the Liquidated Damages LD's provision for the Contractor's “Prolongation Costs” arising from a contractor's entitlement to an extension of time (EOT). Per clause 1.1.35 prolongation costs are “the only compensation due from the Employer to the Contractor for an EOT resulting from compensable delay”. These costs are payable for the duration of the delay, “depending on the value of the Works as certified by the Engineer under Sub-clause 8.4.1, carried out at the time when the event (whether a Variation under clause 7 or a claim under clause 13) giving rise to an EOT occurs”. These costs are calculated by applying a formula contained in the Contract Data that multiplies the average “weight” of on and off-site overheads per day.

As with the earlier version, termination costs are pre-determined and expressed as LD's. LD's payable on termination due to the Contractor's default on insolvency remains at 20% of the value of the unexecuted Works - the second edition now clarifies that this is an exclusive remedy. Where the Contractor terminates, it remains entitled to demobilisation and any other costs reasonably incurred in expectation of completion of the works plus 10% of the value of the incomplete works.

The new version introduces a termination for convenience clause for the benefit of the Employer with the costs being the same as termination by the Contractor for Employer default. Where the Employer chooses to exclude works, it is liable to the Contractor for the Cost of the omission plus 10% of the value of the omitted Works. These remedies are again stated to be exclusive.

As the above is more suited to low value and low risk contracts, when used for more complex, higher value projects, the Employer should look to revise the termination costs clause to a more traditional approach.

The new version also contains certain add-ins for simpler use:

- There is also a new risks table which sets out the Employer's risks and their consequences.
- There is also a table which sets out insurance responsibilities of each party which includes for PI cover in the case of Contractor's design.
- Payment valuation method – tick box selection.

This new and improved version is aimed at bridging the gap between the 1999 Green book and its Red and Yellow book counterparts and in its now more detailed but comprehensive form, has less gaps to fill. It is certainly in keeping with FIDIC's stated mission; *"To improve the business climate and promote the interests of consulting engineering firms globally and*

locally, consistent with the responsibility to provide quality services for the benefit of society and the environment". It is certainly recommended as a good contract for use on minor works projects and should be well received by Contractors due to its retained simplistic and ease of use form.