



WORLD BANK GROUP



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Hydro Asia 2016

Training Course on

Contracts Management

and the Practical Use of

FIDIC Conditions of Contract in the Hydropower
Construction Industry



Session 2

by *Zoltán Záhonyi*, FIDIC AIT, zoltan.zahonyi@zandpartners.com

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VIENTIANE, LAOS

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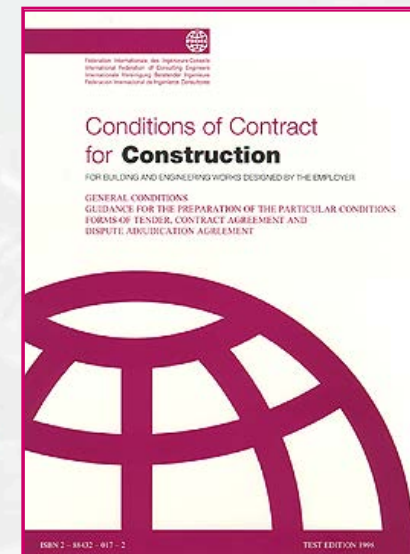
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1. FIDIC Red Book (1999) – basic features, applicability

- » This contract type is the successor of the „classic“ FIDIC conditions of contract type (1987 / 1992 Red Book).
- » The focus is: **CONSTRUCTION**.
- » Suitable for contracts, where the **contractor’s main responsibility is construction** – with very limited extent of design (e.g. factory shop drawings, certain construction details related to the contractor’s technology).
- » The **Employer’s share of risks** rests mainly with the **designs** to be provided by or on behalf of him.



1. FIDIC Red Book (1999) – basic features, applicability

» Suitable for projects

- ▶ of large scale (international), where the works include mainly **construction**,
- ▶ where the employer has sufficient time and resources to prepare all necessary designs (including BoQ).



» Not suitable for projects, which include

- ▶ complex E&M elements, which depend upon the contractor's own technology,
- ▶ off site manufacturing of high value plant,
- ▶ considerable extent of contractor's design.



2. Preparing for a FIDIC Red Book (1999) Contract

The first steps:

» **Identifying the**

Subject of the project

Stakeholders

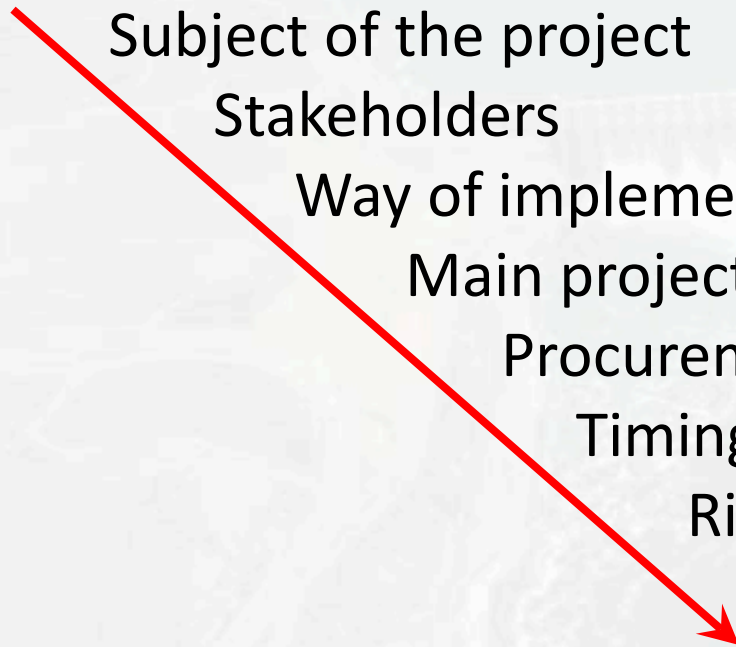
Way of implementation

Main project phases

Procurement strategy

Timing

Risks and responsibilities



2. Preparing for a FIDIC Red Book (1999) Contract

The main project phases:

PREPARATION:

Studies, surveys,
designs (DESIGNER)

Site? Permissions?

Financing

Tender & Contract
documents

»» ENGINEER

CONSTRUCTION:

TIME

MONEY

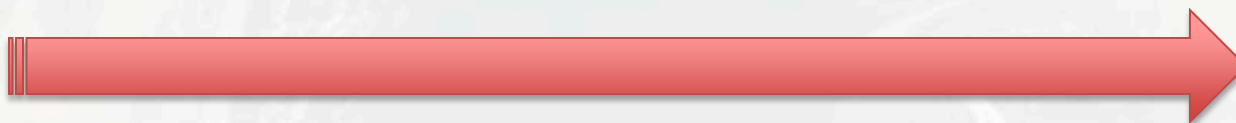
QUALITY

POST CONSTRUCTION:

Operation

Defects Liability

Auditing



2. Preparing for a FIDIC Red Book (1999) Contract

Focus points (for Employers):

Procurement
Strategy,
Timing

Developing
detailed
designs

Suitable and
experienced
designer(s) and
Engineer

Sufficient
and reliably
available
financing

Quantity
related risks

Efficient project
management,
timely decisions



3. The Structure of the Contract Conditions (Clauses)

1: General Provisions - subjects which apply to the Contract in general, e.g., definitions, applicable language and law, priority of documents, use of various documents.

2 - 5: The Employer; The Engineer; The Contractor; Nominated Subcontractors - duties and obligations of the different entities playing a role in the execution of the Works.



6, 7: Staff and Labour; Plant, Materials and Workmanship - requirements for the items which the Contractor brings to the Site.

3. The Structure of the Contract Conditions (Clauses)

8 - 11: Commencement, Delays and Suspension; Tests on Completion; Employer's Taking Over; Defects Liability - follow the *sequence of events* during the construction.

12 - 14: Measurement and Evaluation; Variations and Adjustments; Contract Price and Payment - procedures for the Employer to pay the Contractor for his work.



15, 16: Termination by Employer; Suspension and Termination by Contractor - logically at the end of the construction sequence.



3. The Structure of the Contract Conditions (Clauses)

- 17: Risk and Responsibility** relates to the project as a whole and includes sub-clauses which are only used rarely, together with matters which are critical to the Parties' responsibilities and overlap with the requirements of other important sub-clauses.
- 18: Insurance** - includes important procedures related to insurances to be provided under the Contract.
- 19: Force Majeure** - general clause that covers exceptional events having adverse effect on the compliance with the Contract - beyond the control of the Parties.

3. The Structure of the Contract Conditions (Clauses)

20: Claims, Disputes and Arbitration - probably the most frequently referred clause in the Conditions of Contract. Includes among others procedures, such as:

- » the submission and substantiation of Contractor's claims,
- » the Engineer's response to Contractor's claims,
- » the procedures for the appointment of the Dispute Adjudication Board,
- » the procedures for dispute resolution.

4. The Parties and their basic roles and obligations

THE EMPLOYER:

Designs, contract documents
(incl. BoQ, Technical Specs.)

Permissions (as applicable)

Access to Site

Engagement of the Engineer

Payment

THE CONTRACTOR:

CONSTRUCTION

Safety of Site & Works

Construction Methods


Quality

Time



4. The Parties and their basic roles and obligations

The Employer

- » ...shall give the Contractor right of access to, and possession of, all parts of the Site. (time limit!).
- » ...shall submit reasonable evidence that financial arrangements have been made and are being maintained (which will enable the Employer to pay the Contract Price).
- » ...shall provide the designs for the Contractor. 
- » ...may launch claims against the Contractor, resulting in payment and / or extension of Defects Notification Period. Claims shall be notified „as soon as practicable” – so there is NO TIME BAR for the Employer!

4. The Parties and their basic roles and obligations

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.

-» ...shall **provide the Plant and Contractor's Documents** specified in the Contract, and all **Contractor's Personnel, Goods, consumables and other things and services**, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

4. The Parties and their basic roles and obligations

The Contractor

- > ...shall be responsible for the **adequacy, stability and safety of all Site operations and of all methods of construction.**
- > ...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.

BUT

- > ...shall not be responsible for the design or specification of the **Permanent Works.**



ETC.

4. The Parties and their basic roles and obligations

The Engineer «– Not a Party!

- » ...shall be deemed to act for the Employer.
- » ...has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract.
- » ...may assign duties and delegate authority (to suitably qualified persons).
- » ...may **issue** to the Contractor (at any time) **instructions** and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all **in accordance with the Contract**.





4. The Parties and their basic roles and obligations

The Engineer

- » ...**may be replaced** by the Employer (42 days notice to be given to the Contractor).
- » ...shall **agree or determine** any matter. In doing so, he shall
 - » first **consult** the Parties,
 - » attempt to **reach agreement** (between the Parties) and if this is not achieved:
 - » **make a fair determination** in accordance with the Contract, taking due regard of **all relevant circumstances**.

Each Party **shall give effect** to each agreement or determination unless and until revised (see DAB)!

5. The Contract Documents

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions,
- (e) the General Conditions,
- (f) the Specification, 
- (g) the Drawings, and 
- (h) the Schedules and any other documents forming part of the Contract.

In case of ambiguity or discrepancy, **the Engineer** shall issue any necessary clarification or instruction.

5. The Contract Documents

(d) the Particular Conditions

- ▶ This document is an **essential** part of a FIDIC contract!
- ▶ It is **necessary to provide** for the Particular Conditions, because the ‘General Conditions’ is not applicable without adjustments to the specific project requirements and the local legislation.
- ▶ The Particular Conditions is **always a stand alone document** (shall not be incorporated into the General Conditions).

5. The Contract Documents

(d) the Particular Conditions

- ▶ It shall clearly state the new wording differing from the text of the General Conditions.
- ▶ It shall always include **clear instructions** regarding the differences compared with the General Conditions e.g.

„Delete the first paragraph of Sub-Clause X and replace with the following:”

„Add the following new Sub-Clause:”

Etc.

5. The Contract Documents

(e) the General Conditions

- ▶ No FIDIC contract exists without the General Conditions (as published by FIDIC – with **NO CHANGES!**).
- ▶ The General Conditions **shall form part** of the (FIDIC) Contract – with **NO CHANGES!**
- ▶ Each Party (and the Engineer) shall have an authentic copy of the General Conditions (as published by FIDIC) for their convenience.
- ▶ Translations in local languages are available, however, FIDIC considers as „original” and authentic the English language version!

6. The Defined Terms

1.1.1.1 – 1.1.1.10 The Contract

1.1.2.1 – 1.1.2.10 Parties and Persons

1.1.3.1 – 1.1.3.9 Dates, Tests, Periods and Completion

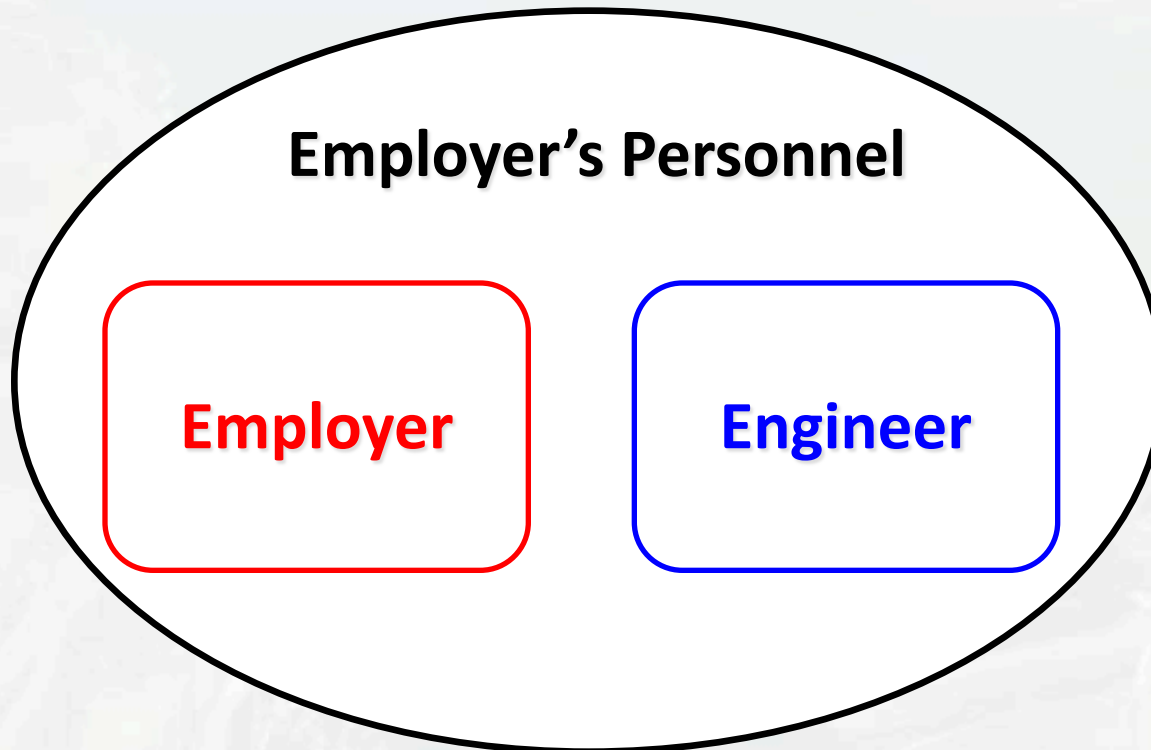
1.1.4.1 – 1.1.4.12 Money and Payments

1.1.5.1 – 1.1.5.8 Works and Goods

1.1.6.1 – 1.1.6.9 Other Definitions

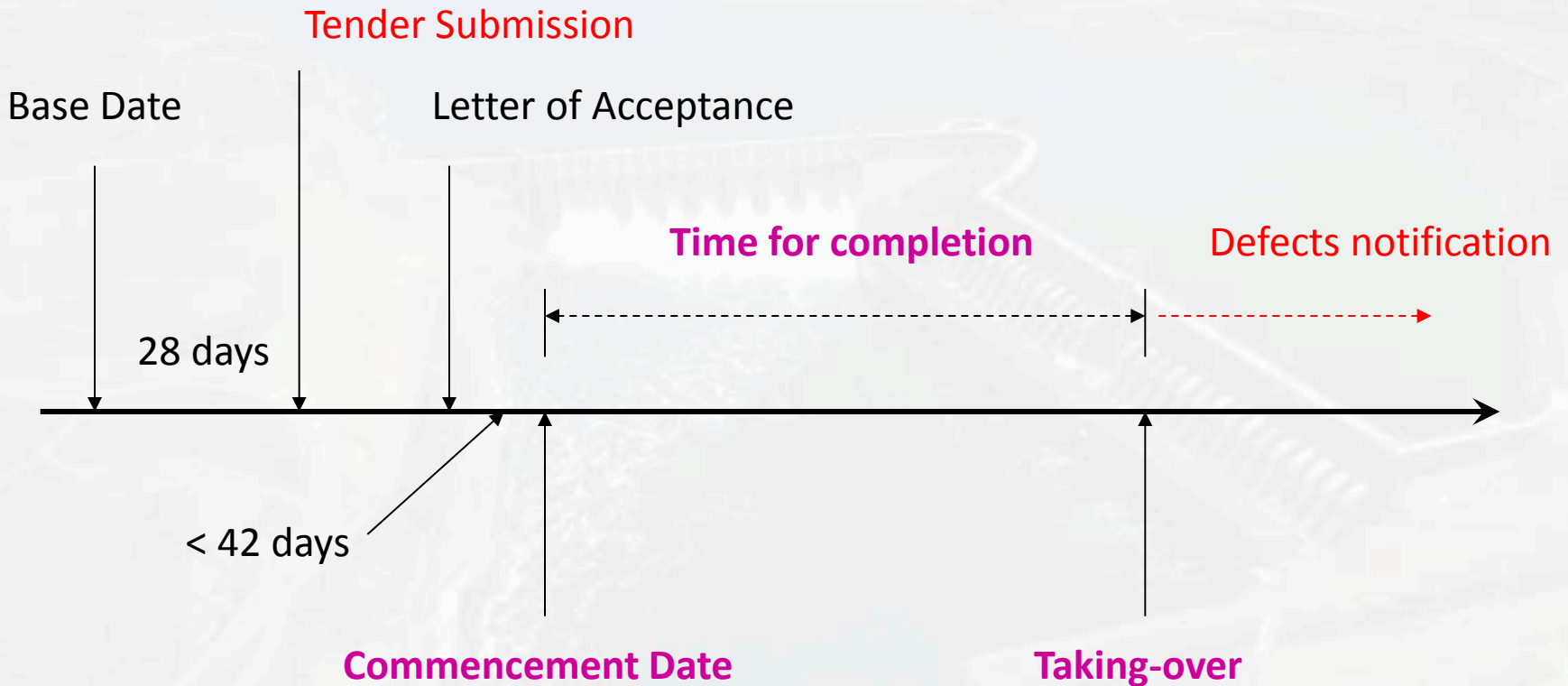
6. The Defined Terms

Parties and Persons



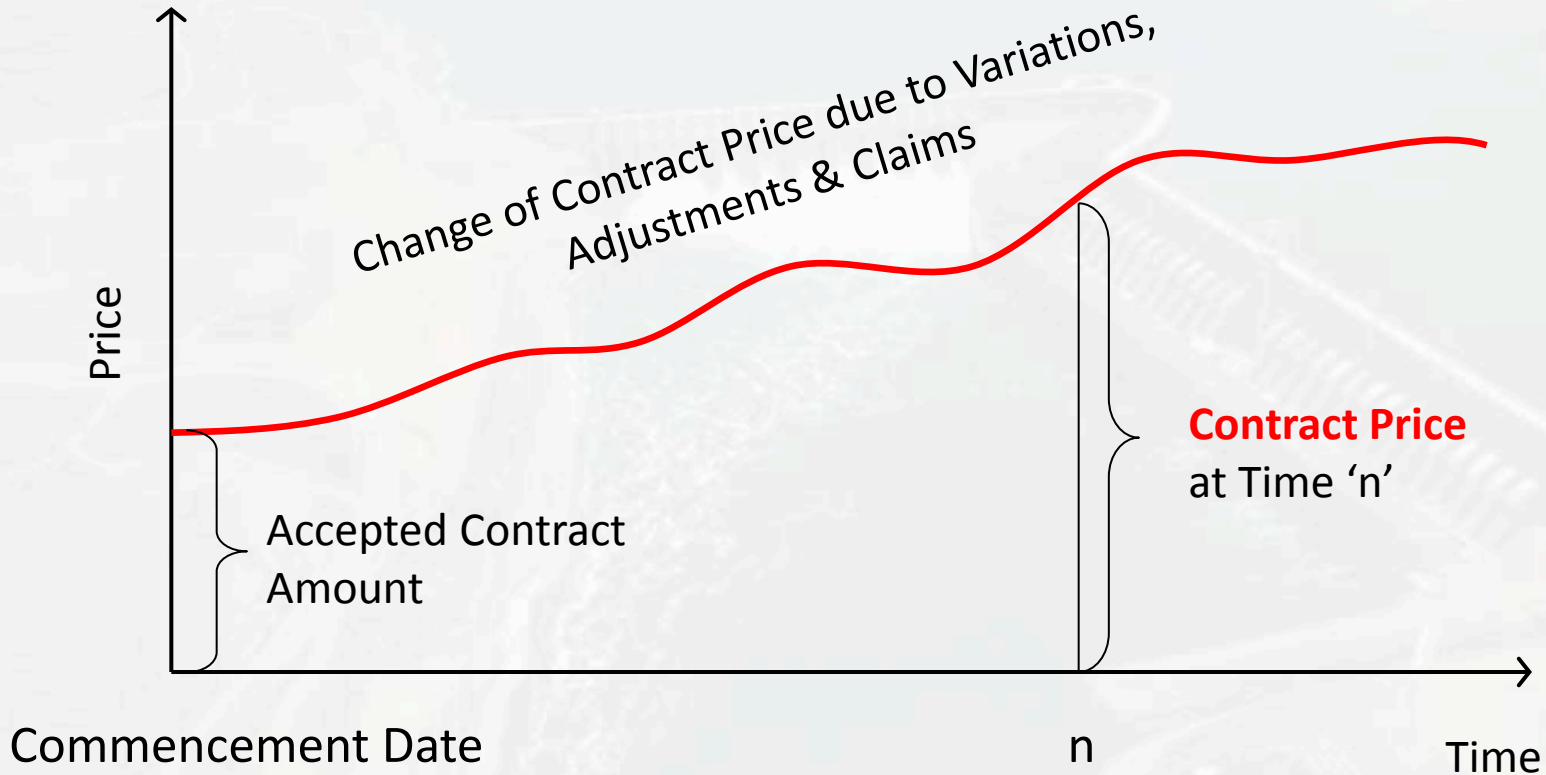
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Dates, Tests, Periods and Completion



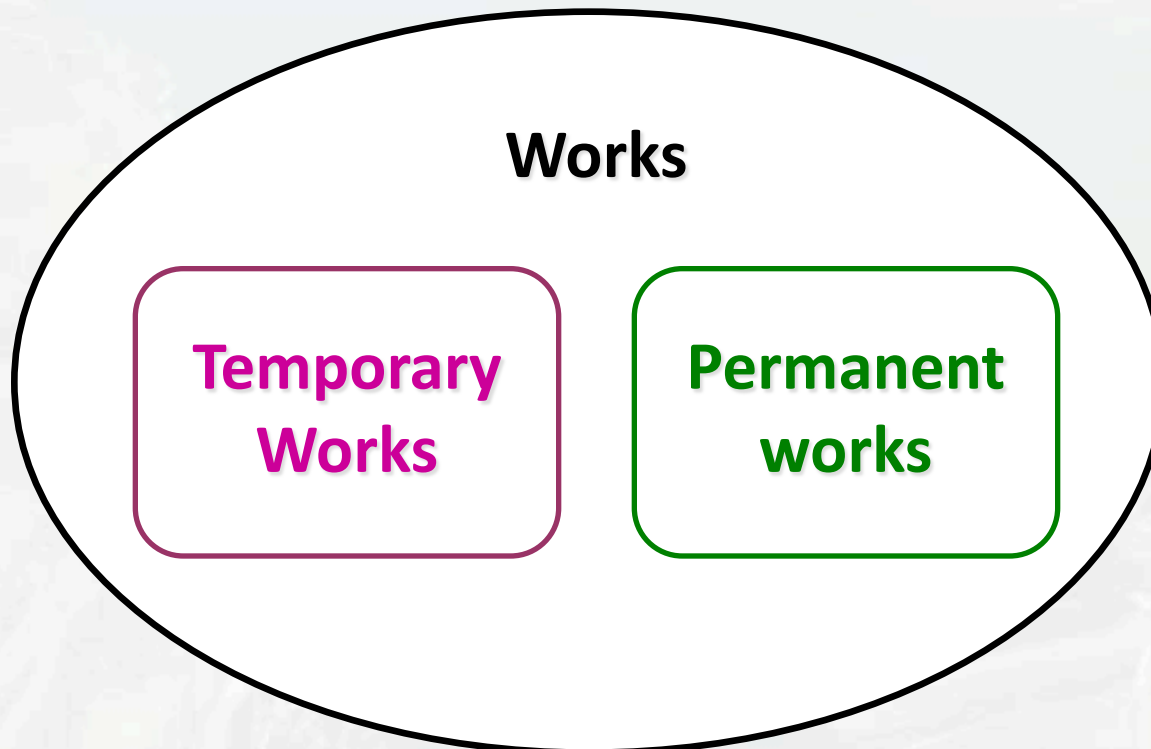
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Money and Payments



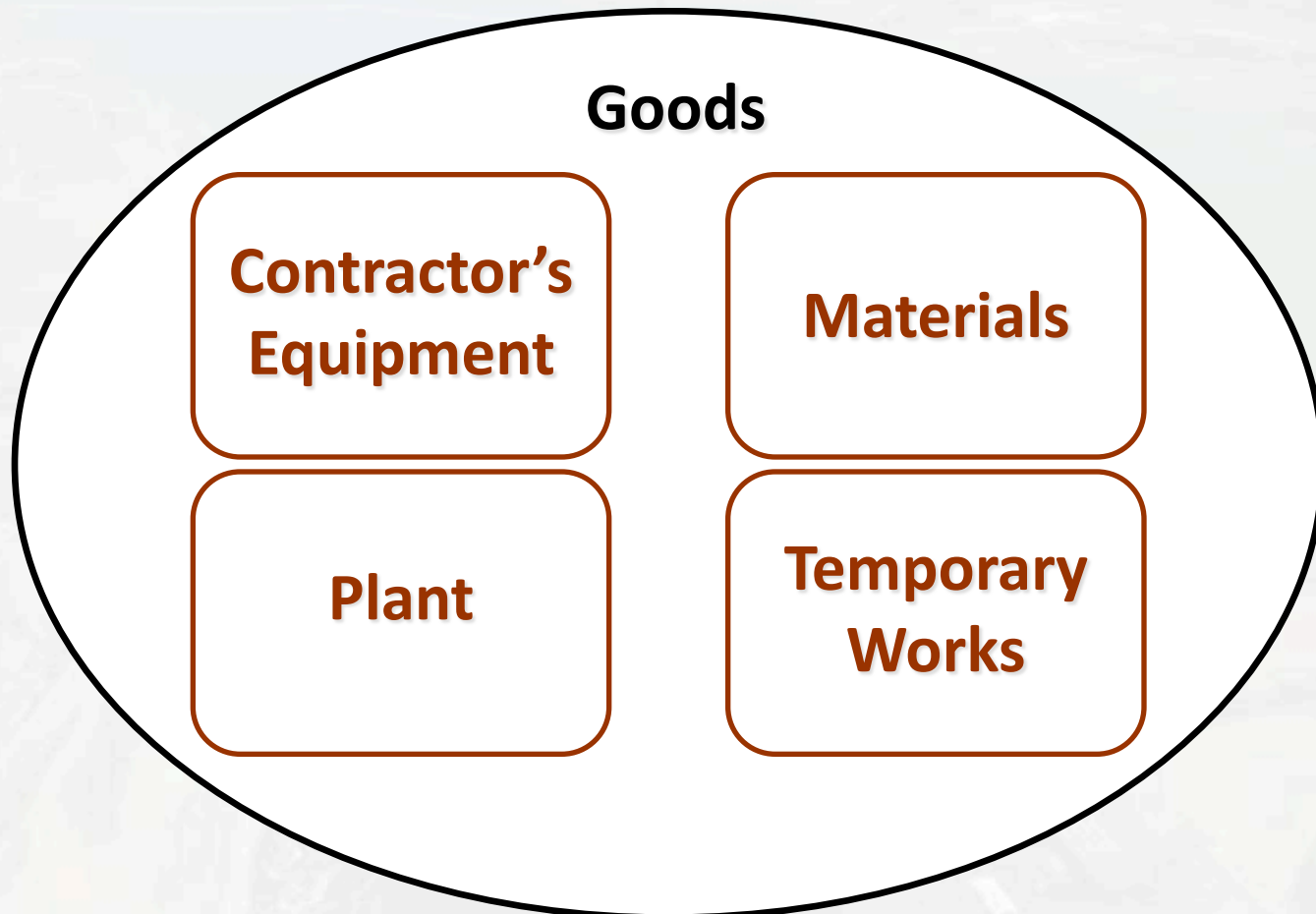
6. The Defined Terms

Works and Goods



6. The Defined Terms

Works and Goods



7. Subcontracting, Nominated Subcontractors

- ▶ The Contractor shall not subcontract the whole of the Works.
- ▶ The Contractor shall be responsible for the acts or defaults of any Subcontractor.

▶ Consent

Not required (If named in the Contract & Materials)

Required (in any other cases)

- ▶ The 28 days notice requirement (before commencing subcontractor's work).
- ▶ Duty to include assignment requirement in the Subcontract.

7. Subcontracting, Nominated Subcontractors

▶ **Nominated Subcontractor:**

- Either stated in the Contract as such OR
- whom the Engineer, instructs the Contractor to employ as a Subcontractor [Cl 13.]

▶ The **Contractor may object** the nomination if

- the Subcontractor has no sufficient competence, resources or financial strength, or
- the subcontract does not specify indemnification in case of negligence or misuse of Goods, or
- the subcontract does not include proper Subcontractor's undertaking and indemnification clauses.

▶ **Special payment provisions** apply to Nominated Subcontractors! (S-C 5.3, 5.4 and 13.5)

8. Staff and Labour

- ▶ The Contractor **shall make arrangements for the engagement of all staff and labour**, local or otherwise, and for their payment, housing, feeding and transport.
- ▶ The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry **where the work is carried out**.
- ▶ The Contractor **shall not recruit**, or attempt to recruit, **staff** and labour from amongst the Employer's Personnel.

8. Staff and Labour

- ▶ The Contractor shall comply with all the **relevant labour Laws** applicable to the Contractor's Personnel AND require them to obey all applicable Laws (**safety!!!**).
- ▶ **No work** shall be carried out on the Site on **locally recognised days of rest**, or outside the normal working hours stated in the Appendix to Tender (**EXCEPTIONS!**).
- ▶ The Contractor shall provide and maintain all **necessary accommodation and welfare facilities** for the Contractor's Personnel.
- ▶ He shall also provide **facilities for the Employer's Personnel**.

8. Staff and Labour

▶ The Contractor shall not permit any of his Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

▶ Health & Safety

The Contractor shall at all times take all **reasonable precautions to maintain the health and safety** (collaboration with local health authorities, medical staff, first aid facilities, sick bay and ambulance service, make available a qualified accident prevention officer at the Site; reporting accidents and recording H&S status at Site etc.).

8. Staff and Labour

- ▶ The Contractor shall provide all necessary **superintendence** to plan, arrange, direct, manage, inspect and test the work.
- ▶ The Contractor's Personnel shall be **appropriately qualified, skilled and experienced** in their respective trades or occupations.
- ▶ The **Engineer may require** the Contractor **to remove** any person employed on the Site or Works, including the Contractor's Representative if applicable [cases listed (a) to (d)].
- ▶ Contractor shall then appoint a suitable replacement.

8. Staff and Labour

- ▶ The Contractor shall keep records of **Contractor's Personnel and Equipment** - details shall be submitted each calendar month.
- ▶ The Contractor shall take all **reasonable precautions to prevent** any unlawful, riotous or disorderly conduct by or amongst his Personnel, and to **preserve peace** and protection of persons and property on and near the Site.



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END of Session 2

Thank you for your kind attention!

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zoltan.zahonyi@zandpartners.com