

OVERVIEW OF CONSTRUCTION CONTRACTS

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TOPICS OF INTEREST

01.

What is FIDIC?

02.

Who uses FIDIC contracts?

03.

Why use FIDIC contracts?

04.

Parties under FIDIC Contract.

05.

FIDIC Books

06.

Quick Facts for FIDIC Practitioners



01. What is FIDIC?



FIDIC is a French language acronym that stands for *Fédération Internationale Des Ingénieurs-Conseils* which means International Federation of Consulting Engineers.

FIDIC is a standard form of Contract used for large value works.



FIDIC was started in 1913 by the trio of France, Belgium and Switzerland. The United Kingdom joined the federation in 1949.

**FIDIC headquarters are in Switzerland.
FIDIC is used in over 200 countries.**



02. Who uses FIDIC Contracts?



02. WHO USES FIDIC CONTRACTS?

FIDIC contracts are used in Public Infrastructure projects including:



Roads/Bridges



Dams



Plant & Machinery



Oil and gas Projects

FIDIC may be used for Private Contracts. (White book and Green book)

02. WHO USES FIDIC CONTRACTS?

BENEFITS OF USING FIDIC CONTRACTS?

- FIDIC contracts are standardized & hence preferred by International Contractors who deem it as fair.
- Clarity of contracts, consistent wording
- Covers all kinds of issues that may arise during construction
- Provides a Dispute Resolution Mechanism as works progress
- Has best practices in the industry and addresses the common issues
- Condition for Multilateral Development Banks (MDBs)
- FIDIC is used for Development projects funded by MDBs for use in aid-funded projects. Project Financiers in Uganda include:

1. AfDB

2. World Bank

3. European Union

4. China Exim Bank

5. JICA-Japanese International Corp. Agency

6. BADEA – Arab Bank for Economic Development in Africa

A blue and silver fountain pen is positioned diagonally across the left side of the image, resting on a document. The document features the word 'CONTRACT' in large, bold, blue capital letters. Below the word, there is a line for a date, with 'day of' and ', 20' visible. At the bottom left, there is a line for a signature, with '(Sec' and '(First' visible. The background is a light, neutral color.

0.3 PARTIES TO FIDIC CONTRACTS

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Employer

Owner of project e.g Government Agency (UNRA, Ministry of Energy, KCCA etc)

Engineer

Agent appointed by the Employer to act as Employer's representative (Consulting Engineer/Supervisor) – Red, Yellow & Pink book. *Silver book does not specify an Engineer.

Contractor

Party with responsibility to carry out the works



0.3 PARTIES TO FIDIC CONTRACTS

Two Contracts are formed for civil works projects:

Between Consulting
Engineer & Employer

Between Employer &
Contractor



Role of Employer

- Appoint the Engineer
- Give Possession of Site to Contractor
- Give Instructions & Notices
- Nominate Sub-contractors
- Pay the Contractor for works



Role of Engineer

- Act as Employer's representative
- Supervise/Inspect work done by Contractor
- Administer the contract - give Instructions, make fair & independent determinations, certify works.

NB: Engineer is supposed to be impartial



Role of Contractor

- Construction & Completion of works in accordance with program & expeditiously
- Provide Guarantees/Securities and Insurances
- Advance Payment Guarantee (10-20% of Contract amount used for Mobilization)
- Performance Security (10% of contract amount)
- Retention Guarantee
- NB: Guarantees, Securities from Bank domiciled in Uganda
- Insurance Policies - Contractor's All Risk, Workman's Compensation, Plant & Equipment Insurance

0.4 FIDIC BOOKS



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FIDIC RAINBOW SUITE



FIDIC Contracts are operated through the FIDIC General Conditions of Contract found in the FIDIC Books.

Main difference in the books is the risk apportionment between Employer & Contractor. Who does the Design/Who bears risk for change in quantities?

THE BOOKS

- Red Book
- Pink Book
- Yellow Book
- Silver Book
- Golden Book
- White Book
- Green Book
- Blue Book



Colours relate to the type of works

RED BOOK

The Red Book provides conditions of contract for construction works where the Building & Engineering.

Works are designed by the Employer. Employer designs & hence bears the risk for changes in quantities. Contract is admeasurement based contract.



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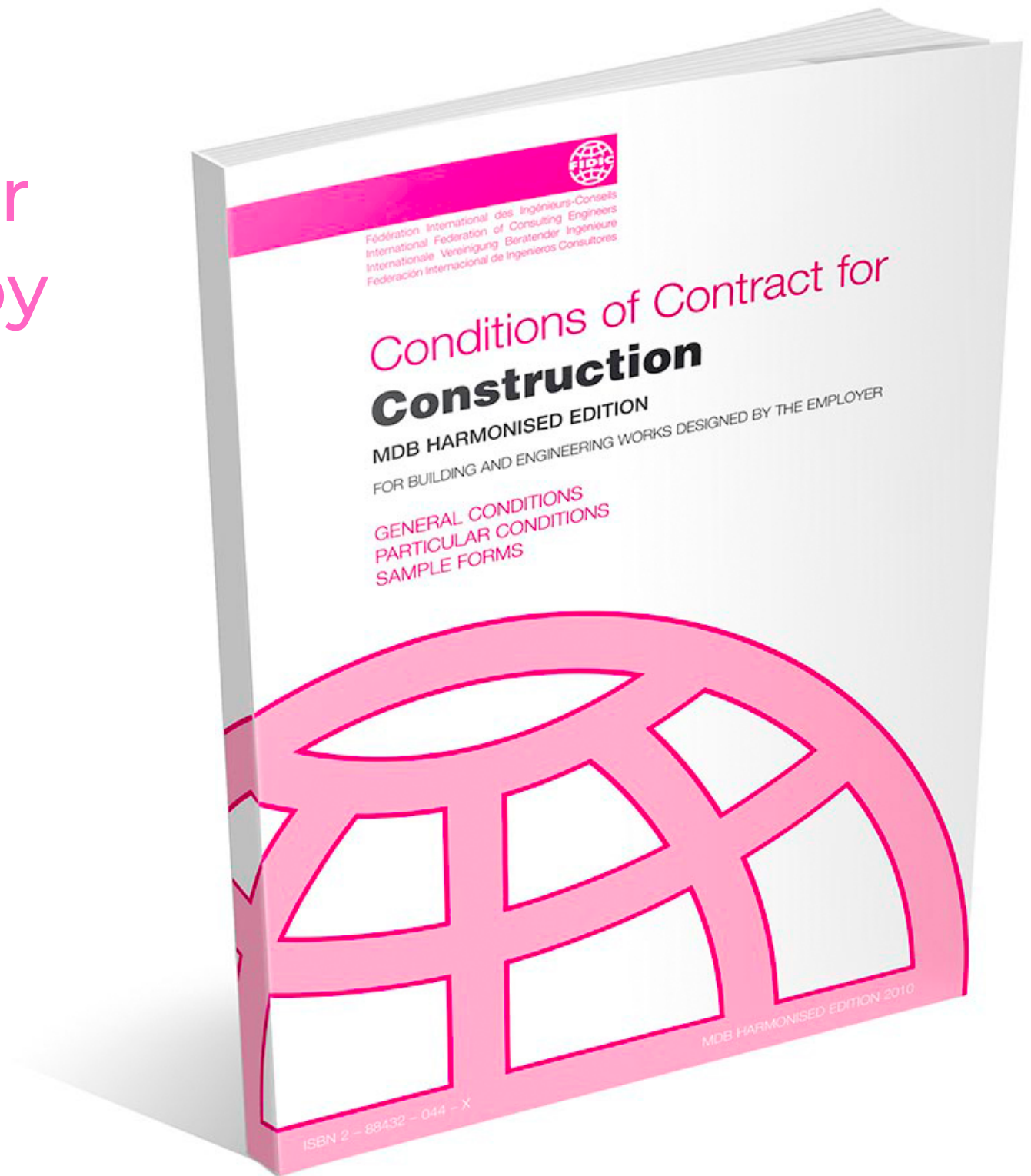
0.4 FIDIC BOOKS

PINK BOOK

Conditions of Contract for Construction for Building & Engineering works designed by the Employer.

Contractor constructs the Works in accordance with design provided by the Employer.

Multilateral Development Banks (MDBs) require their borrowers or aid recipients to adopt the FIDIC Conditions of Contract.

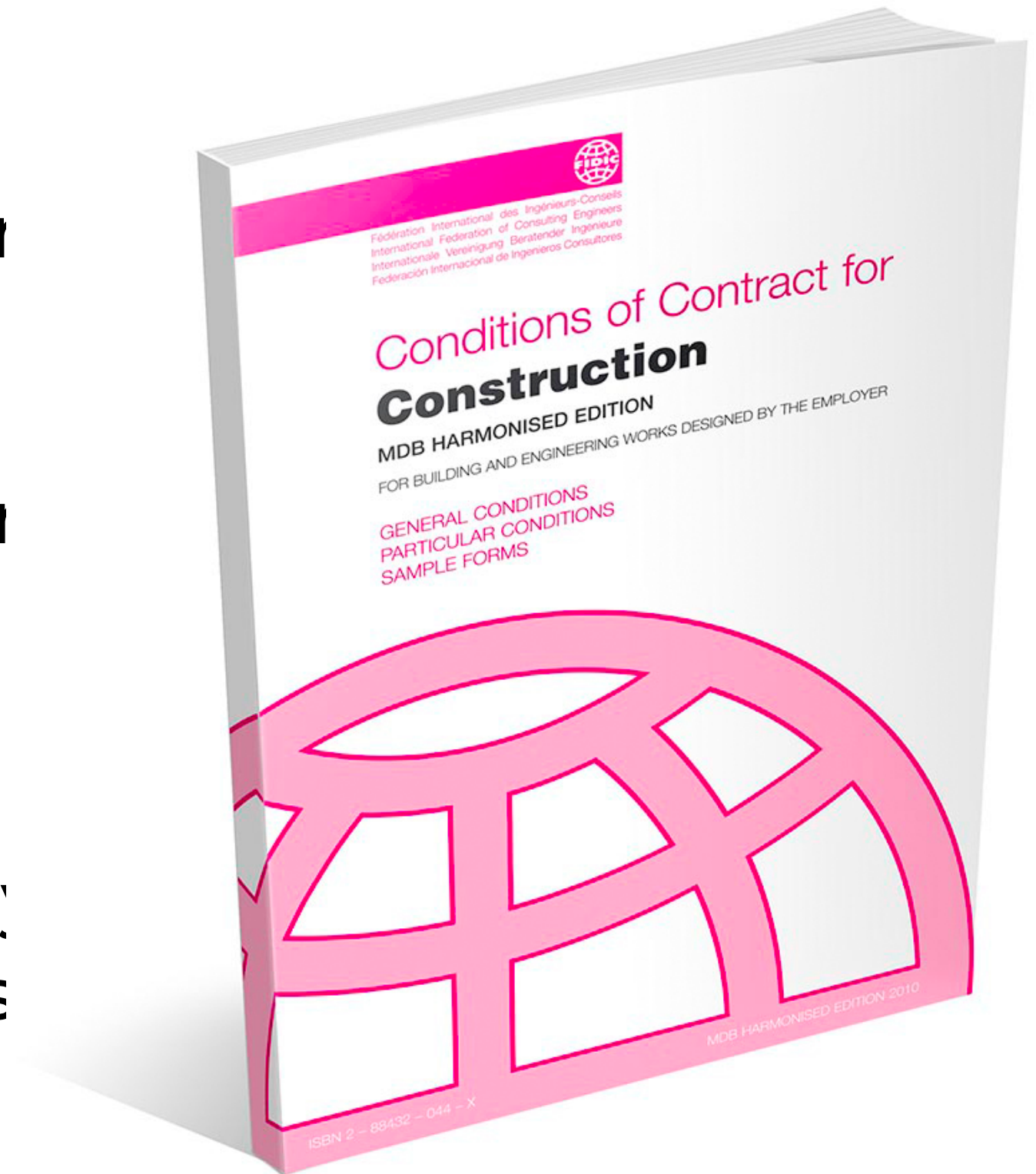


PINK BOOK

MDBs that participated in the preparation of the Pink Book include:

- African Development Bank
- International Bank for Reconstruction and Development (The World Bank)
- Islamic Bank for Development Bank

Used for Development projects funded by Multilateral Development Banks (MDBs) for use in aid-funded projects.

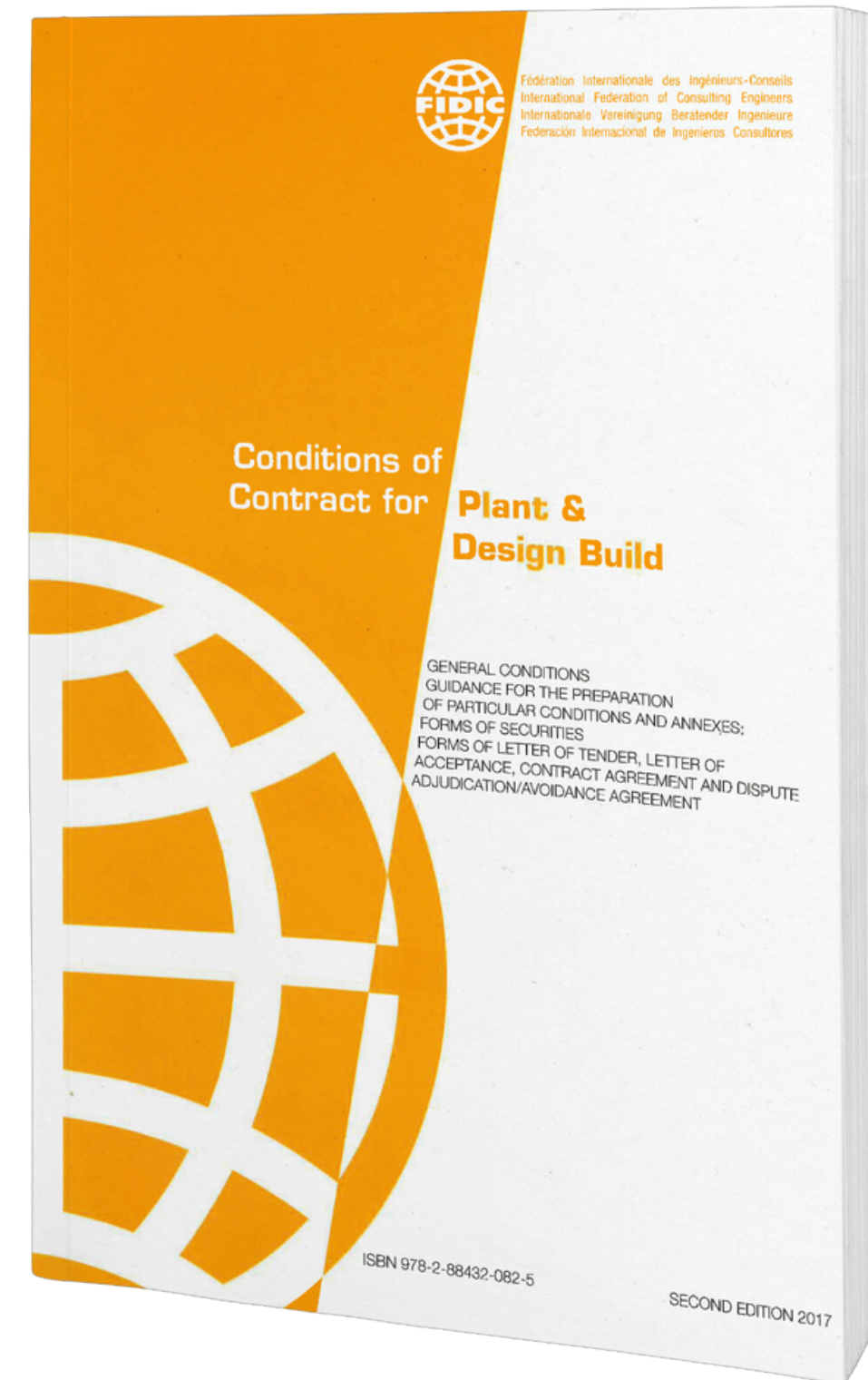


0.4 FIDIC BOOKS

Yellow Book

Conditions of Contract for Plant and Design Build for Electrical & Mechanical plant, and for Building & Engineering works designed by the Contractor.

Contractor bears the risk for changes in quantities.
Contract is a lumpsum based contract.

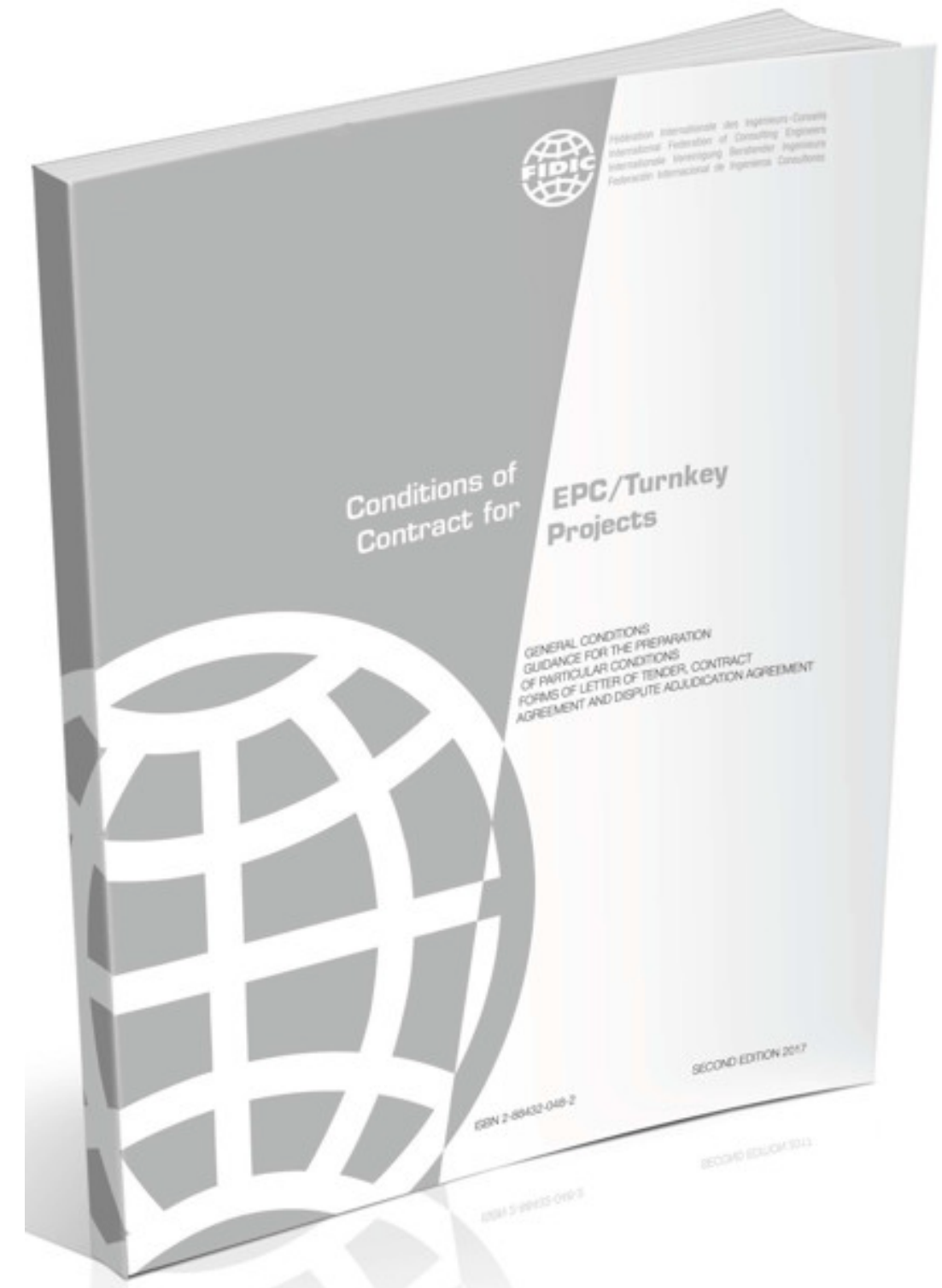


Silver Book/Turnkey

Conditions of Contract for EPC/Turnkey Projects.*Engineer, Procure and Construct.

EPC contractor is responsible for the engineering design of the works, its procurement and subsequent construction.

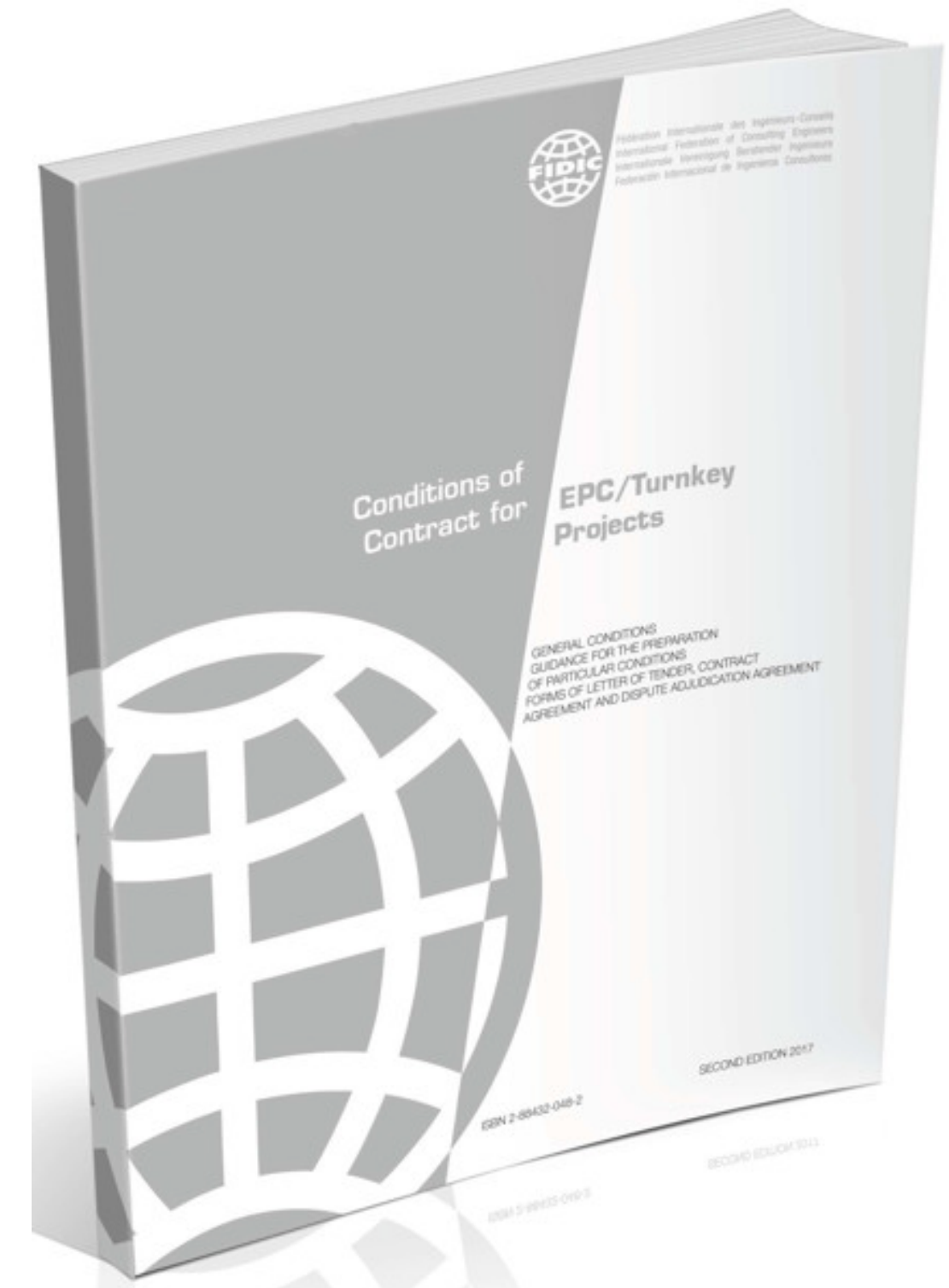
Turnkey, in principle, means a contract whereby the contractor provides whatever is necessary for the project and on completion hands over a key to the Employer.



Silver Book/Turnkey

Turnkey Projects are characterized by:

- Certainty of Final price
- Certainty of Completion date
- More expensive type of contracts
- Contractor has total responsibility for design and execution of project with minimal involvement of Employer.
- Wider range of risk is borne by the contractor
- Employers risk is war, terrorism, force majeure



Golden Book

Conditions of Contract for Design, Build and Operate Projects (DBO)

The Gold Book is used in projects where the design-build work and the operation and Maintenance work are to be carried out by the same contractor.

Usually used for projects with an operation phase of 20 years.

Greater risk is borne by the Contractor.



0.5 Quick Facts on FIDIC



0.5 QUICK FACTS ON FIDIC

FIDIC Books have various Editions, most recent is the 2017 Edition of the Red, Yellow and Silver books.

Parties to FIDIC contracts have distinct responsibilities.

FIDIC contracts typically include:

- 1) General Conditions of Contract(GCC)
- 2) Particular Conditions of Contract(PCC) Access to site, Completion Time, Commencement date, % Liquidated damages, % Retention.

Liquidated damages are chargeable when a contractor delays to complete works within the duration for completion indicated in the contract.

FIDIC Contracts provide for Claims and how they are to be lodged. Notice must be issued within 28 days from when the Contractor became aware of the events/circumstances giving rise to the claim.

0.5 QUICK FACTS ON FIDIC

Note that FIDIC 2017 provides that if a Party cannot meet the 28 days Notice period, it should notify the Engineer and give reasons for delay.

Common Triggers for Construction Claims

- Delayed Access to Site
- Variations
- Delayed Drawings
- Unforeseeable Physical Conditions
- Idle Equipment and Manpower
- Exceptionally adverse climate



Contractors often make the following claims:

- Claims for Variations Instructed
- Claims for Extension of Time (EoT)
- Claims for Prolongation Costs/Loss of Profit
- Claim for idle Equipment & Manpower/Personnel
- Claim for Acceleration & Disruption ETC
- Claims must be substantiated. Record keeping is essential during construction projects.

Legal Principle: He who claims must prove.

- FIDIC provides for Dispute Resolution Mechanism through a Dispute Adjudication Board (DAB)

Note: FIDIC 2017 refers to DAB as DAAB – Dispute Avoidance & Adjudication Board.

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