

FIDIC 1999 Upgrade

Adding the improvements of the 2017 forms into the 1999 Suite

Clause	Improvement
1.2	<p>Add: "(e) references to reasonable profit shall mean the percentage of Cost stated in the Appendix to Tender".</p> <p>Add to Appendix to Tender: "Reasonable profit 1.2 __% or, if none stated, 5%"</p>
3.1	<p>Add in third paragraph after "undertakes": "not to require approval for a determination under Sub-Clause 3.5 and".</p>
3.3	<p>R/Y: Add after second sentence: "If the Contractor considers that an instruction constitutes a Variation, the Contractor shall immediately, and before commencing any work related to the instruction, give a notice to the Engineer with reasons. If the Engineer does not respond within 7 days confirming, revoking or varying the instruction, the Engineer shall be deemed to have revoked the instruction."</p> <p>S: Add after second sentence: "If the Contractor considers that an instruction constitutes a Variation, the Contractor shall immediately, and before commencing any work related to the instruction, give a notice to the Employer with reasons. If the Employer does not respond within 7 days confirming, revoking or varying the instruction, the Employer shall be deemed to have revoked the instruction."</p>
3.5	<p>R and Y only. Replace "the Engineer shall consult" with "the Engineer shall act neutrally and shall consult".</p>
4.1	<p>R: Add to (c) after "Contract": "(and each element of the part shall be fit for its ordinary purpose)"</p> <p>Y/S: Add to first paragraph: "(and each element of the Works shall be fit for its</p>



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	ordinary purpose)".
8.7	<p>Add at the end of the first paragraph: "other than in the case of fraud, deliberate default or reckless misconduct by the Contractor."</p>
15.2	<p>Add: "(g) fails to give effect promptly to a decision of the DAB in accordance with Sub-Clause 20.4 [<i>Obtaining the Dispute Adjudication Board's Decision</i>]".</p> <p>Add after "may" in line 1 of the second paragraph: "give 14 days' notice of his intention to terminate the Contract. Thereafter, the Employer may forthwith terminate the Contract and expel the Contractor from the Site by giving a second notice to that effect provided that in the case of sub-paragraphs (a) – (d) and (g) the default has continued until the date of the issue the second notice."</p>
16.1	<p>Add after "Sub-Clause 14.7 [Payment]": "or fails to give effect promptly to a decision of the DAB in accordance with Sub-Clause 20.4 [<i>Obtaining the Dispute Adjudication Board's Decision</i>]".</p>



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	In the first and third paragraphs, add after "evidence or payment": "or the Employer has given effect to the decision of the DAB".
16.2	<p>Add: "(h) the Employer fails to give effect promptly to a decision of the DAB in accordance with Sub-Clause 20.4 [Obtaining the Dispute Adjudication Board's Decision]".</p> <p>Add to the first sentence of the second paragraph: "by giving a second notice, provided in the case of sub-paragraphs (a) to (e) that the default has continued for the notice period".</p> <p>Add after "may" in line 1 of the second paragraph: "give 14 days' notice of his intention to terminate the Contract. Thereafter, the Contractor may forthwith terminate the Contract by giving a second notice to that effect provided that in the case of subparagraphs (a) – (e) and (h) the default has continued until the date of the issue the second notice."</p>
20.1	Add to the second paragraph after "28 days": "and (a) there are no circumstances which justify such failure and (b) the Employer can demonstrate material prejudice as a result of such failure".
20.3	<p>Add at end: "Both Parties and each appointed member shall promptly sign or shall be deemed to have signed the DAB agreement provided by the member under which:</p> <p>(i) the monthly services fee and daily fee shall be as stated in the terms of the appointment; and</p> <p>(ii) the law governing the DAB agreement shall be the governing law of the Contract defined in Sub-Clause 1.4 [<i>Law and Language</i>].</p>
20.4	In fourth paragraph after "who shall promptly give effect to it" add: "whether or not notice of dissatisfaction has been given under this Sub-Clause".
20.7	Replace Clause with:

	"In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 20.6 [<i>Arbitration</i>] in which case Sub-Clause 20.4 [<i>Obtaining DAB's Decision</i>] and Sub-Clause 20.5 [<i>Amicable Settlement</i>] shall not apply to this reference. The arbitral tribunal shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision."
20.8	Delete Clause.

Please get in touch at edward.corbett@howardkennedy.com with your thoughts or to discuss any concerns.

