

C/M/S/ Cameron McKenna

A comparison of some key provisions in the IChemE Red Book and FIDIC Yellow Book

Provision	IChemE Red Book 2007 edition	FIDIC Yellow Book 1999 edition
Duty to cooperate	<p>Yes</p> <p>The parties should cooperate with each other with the aim of completing the plant and works in accordance with the contract and keeping costs as low as possible. The parties agree to deal openly with each other and to work to resolve any problems.</p>	<p>No</p>
Works fit for purpose	<p>No express fitness for purpose obligation.</p>	<p>The works should be fit for the purpose for which they are intended as defined in the contract.</p>
Site conditions	<p>Contractor entitled to additional time and money for unforeseen site conditions.</p>	<p>Contractor entitled to additional time and money for unforeseen site conditions provided that notification is given on time (see further below under 'Time bar for claims').</p> <p>The Employer is also entitled to balance out more favourable conditions.</p>
Testing	<p>There is a detailed testing regime, with a minimum of four tests (off-site and pre-installation, on-site completion of construction, take-over tests and performance tests). These tests have been a consistent feature of IChemE contracts.</p>	<p>There are three default tests on completion: pre-commissioning; commissioning and trial operation. Also gives an option for tests after completion.</p>
Payment	<p>Lump sum payable in instalments as specified in the contract price and payment schedule. Provision for instalments to be made on the completion of a specified task or milestone.</p>	<p>Lump sum payable in instalments made on basis of applications for interim payments that are made monthly or in accordance with schedule of payments.</p>
Limited liability	<p>Yes – to amount specified in Contract (subject to certain exceptions).</p>	<p>Yes – to amount specified in Contract (subject to certain exceptions).</p>

<p>Time bar for claims</p>	<p>No</p> <p>The Contractor is, however, obliged to give notice as soon as possible after becoming aware of a delay in the performance of its obligations.</p>	<p>Yes</p> <p>Notice must be given if the Contractor considers there to be an entitlement to any extension of time or additional payment. The right to claim is lost if the Contractor fails to give notice within 28 days after it became (or should have become) aware.</p>
<p>Dispute resolution</p>	<p>There is a general obligation to avoid the escalation of problems into disputes between the parties and third parties.</p> <p>Before giving rise to a dispute, any problems must first be referred to the Project Manager who should give a decision on the matter within 28 days.</p> <p>The parties are then obliged to attempt in good faith to negotiate a settlement of the dispute.</p> <p>If this fails, the dispute can be referred to mediation.</p> <p>Disputes should be finally resolved by arbitration in accordance with the Arbitration Rules published by IChemE.</p>	<p>Disputes should be adjudicated by a Dispute Adjudication Board within 84 days of the reference.</p> <p>If either party is dissatisfied with the decision of the DAB, it can give notice within 28 days of the decision.</p> <p>Following a notice of dissatisfaction, the parties should attempt to settle the dispute amicably. However, unless both parties agree differently, arbitration can be commenced within 56 days after a notice of dissatisfaction is given.</p> <p>Disputes should be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce.</p>