

# **DELIVERING APPROPRIATE FIDIC PARTICULAR CONDITIONS OF CONTRACT TO AVOID DISPUTE AND TO INCREASE CONSTRUCTION PROJECT'S**

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## **Abstract**

This article examines the importance of drafting clear and precise Particular Conditions in FIDIC contracts to avoid disputes and enhance the efficiency of construction projects. The study identifies common issues arising from poorly drafted Particular Conditions, such as ambiguities, imbalanced risk allocation, and non-compliance with local laws. Through a literature review method, this research analyzes case examples of disputes caused by improper contract modifications and highlights best practices in drafting Particular Conditions, including clarity in language, alignment with local legal frameworks, equitable risk allocation, and effective dispute resolution mechanisms. The findings emphasize the need for careful customization of FIDIC contracts to prevent misunderstandings and ensure smooth project execution. The article concludes that well-drafted Particular Conditions can significantly reduce disputes and improve project outcomes, offering practical recommendations for future contract drafting.

Keywords: FIDIC contracts, construction disputes, risk allocation, dispute resolution, contract drafting.

## **Abstrak**

Artikel ini membahas pentingnya penyusunan Kondisi Khusus yang jelas dan tepat dalam kontrak FIDIC untuk menghindari perselisihan dan meningkatkan efisiensi proyek konstruksi. Penelitian ini mengidentifikasi masalah umum yang muncul akibat penyusunan Kondisi Khusus yang buruk, seperti ambiguitas, distribusi risiko yang tidak seimbang, dan ketidaksesuaian dengan hukum lokal. Melalui metode tinjauan pustaka, penelitian ini menganalisis contoh kasus perselisihan yang disebabkan oleh modifikasi kontrak yang tidak tepat dan menyoroti praktik terbaik dalam penyusunan Kondisi Khusus, termasuk kejelasan bahasa, kesesuaian dengan kerangka hukum lokal, alokasi risiko yang adil, dan mekanisme penyelesaian sengketa yang efektif. Temuan ini menekankan pentingnya kustomisasi kontrak FIDIC yang cermat untuk mencegah kesalahpahaman dan memastikan kelancaran pelaksanaan proyek. Artikel ini menyimpulkan bahwa Kondisi Khusus yang disusun dengan baik dapat mengurangi perselisihan dan meningkatkan hasil proyek, serta memberikan rekomendasi praktis untuk penyusunan kontrak di masa depan.

Kata Kunci: kontrak FIDIC, perselisihan konstruksi, alokasi risiko, penyelesaian sengketa, penyusunan kontrak.

## **INTRODUCTION**

In the global construction industry, the use of standardized contracts is pivotal for ensuring clarity, fairness, and efficiency in project execution. The Fédération Internationale des Ingénieurs-Conseils (FIDIC) provides widely recognized standard forms of contracts that serve as a foundation for many international construction projects. These contracts are designed to be adaptable, allowing for modifications through the inclusion of Particular Conditions to address specific project requirements and local legal frameworks. The careful drafting of these Particular Conditions is crucial, as they directly influence the project's success and the prevention of disputes. However, the customization of FIDIC contracts through Particular Conditions often presents challenges. Inadequate or ambiguous modifications can lead to misunderstandings, misinterpretations, and disputes between contracting parties. The complexity of construction projects, coupled with the diverse legal and cultural contexts in which they operate, necessitates a thorough and informed approach to drafting these conditions to mitigate potential conflicts and enhance project efficiency.

Recent studies have highlighted the importance of clear and well-structured dispute resolution mechanisms within FIDIC contracts. The 2017 updates to the FIDIC suite introduced significant changes, including the separation of claims and disputes into distinct clauses, aiming to streamline the resolution process and reduce the likelihood of disputes escalating to arbitration or litigation. . These developments underscore the evolving nature of contract management and the need for continual assessment of contract provisions to align with best practices. Despite these advancements, there remains a gap in understanding the optimal strategies for formulating Particular Conditions that effectively prevent disputes and promote efficiency. . This gap is particularly evident in projects where the standard FIDIC provisions are extensively modified without adequate consideration of the implications, leading to increased risks and inefficiencies.

**Research Questions:**

1. How do the modifications in Particular Conditions of FIDIC contracts influence the occurrence and resolution of disputes in construction projects?
2. What best practices can be identified for drafting Particular Conditions that enhance project efficiency and minimize conflicts?

**Research Objectives:**

1. To analyze the impact of customized Particular Conditions on dispute frequency and project efficiency.
2. To identify and recommend best practices for drafting Particular Conditions that align with the objectives of dispute avoidance and efficient project delivery.

**RESEARCH METHODOLOGY**

This research adopts a literature review method as the primary approach to collect, analyze, and synthesize information regarding the use of Particular Conditions in FIDIC contracts to prevent disputes and improve construction project efficiency. The literature review method is selected because it enables the researcher to evaluate previous studies, legal guidelines, and best practices applied in various international construction projects. The sources reviewed include peer-reviewed journal articles, technical reports, updated FIDIC contract documents, and publications from professional bodies such as FIDIC and the International Bar Association.

By conducting a comprehensive literature review, this study aims to identify common patterns, recurring challenges, and effective strategies in drafting Particular Conditions. Moreover, this method allows for a comparative analysis of how FIDIC contracts are implemented in different legal and geographical contexts, helping to understand the factors that influence their success or failure. The findings are expected to provide both practical and theoretical contributions for construction professionals,

contractors, consultants, and employers in preparing clearer, fairer, and more efficient contractual terms.

## **DISCUSSION AND ANALYSIS**

### **A. Common Issues Arising from Poorly Drafted Particular Conditions**

Poorly drafted Particular Conditions in FIDIC contracts can lead to significant disputes and inefficiencies in construction projects. One prevalent issue is the inclusion of ambiguous or conflicting clauses that create uncertainty regarding the parties' rights and obligations. For instance, inconsistencies between the General Conditions and the Particular Conditions can result in confusion over which provisions take precedence, leading to disagreements and potential legal challenges. Such ambiguities undermine the clarity and predictability that standardized contracts like FIDIC aim to provide.

Another common problem arises when modifications in the Particular Conditions disrupt the balance of risk allocation established in the General Conditions. FIDIC's Golden Principle 3 emphasizes that Particular Conditions should not alter the risk/reward balance of the standard contract. However, deviations from this principle can unfairly shift risks to one party, leading to disputes and potential project delays. For example, assigning unforeseen site conditions entirely to the contractor without proper justification can result in claims and litigation, as the contractor may not have anticipated such risks during tendering.

In drafting Particular Conditions is another source of disputes. When the Particular Conditions fail to align with mandatory local laws, conflicts can arise between contractual obligations and legal enforceability. This misalignment can lead to the nullification of certain contract clauses or the imposition of legal penalties, thereby affecting project timelines and costs (Shahrour, 2021). Ensuring that

Particular Conditions are tailored to comply with local legal frameworks is essential to prevent such issues. Furthermore, the lack of clarity in dispute resolution mechanisms within the Particular Conditions can exacerbate conflicts. For instance, specifying different timelines or procedures for arbitration in the Particular Conditions compared to the General Conditions can create confusion and delay the resolution process. A case study highlighted a situation where conflicting arbitration timelines in an EPC contract led to significant project delays and legal complications (Amuda, 2024). Such discrepancies emphasize the importance of consistency and precision in drafting dispute resolution clauses.

## **B. Case Examples of Disputes from Improper Contract Modifications**

Improper modifications to FIDIC contracts can lead to significant disputes, as evidenced by various international cases. In *Maeda Corporation v. Bauer Hong Kong Ltd* (2020), the Hong Kong Court of Appeal upheld a decision emphasizing the necessity for contractors to strictly adhere to the notification requirements stipulated in the contract. Bauer's failure to specify the contractual basis for its claim within the 28-day period resulted in the dismissal of its claim, highlighting the critical importance of precise and timely claim notifications under FIDIC contracts.

Another illustrative case is *Shepherd Construction Ltd v. Drax Power Ltd* (2021), where the UK Technology and Construction Court dealt with the interpretation of payment provisions under the FIDIC Yellow Book. The court held that sums due for remedying defects from one package of works could be withheld from retention money related to another package, emphasizing the need for clarity and precision in drafting contract clauses to avoid unintended financial implications.

In *Haraf Traders Limited v. Narok County Government* (2022), the Kenyan High Court addressed disputes arising from the use of outdated FIDIC contract editions. The plaintiff's claim for outstanding payments was contested by the defendant, citing breaches such as substandard work and unilateral contract extensions. The case underscores the challenges that can arise when parties rely on older contract versions without adequate updates to reflect current standards and practices.

### **C. Best Practices in Drafting Particular Conditions**

A fundamental best practice in drafting Particular Conditions is to ensure clarity and precision in language. Ambiguous or vague terms can lead to differing interpretations, resulting in disputes and project delays. Therefore, it's crucial to define key terms explicitly and avoid unnecessary complexity. For instance, emphasize the importance of clear definitions to prevent misunderstandings between parties. Another critical aspect is alignment with local laws and regulations. Particular Conditions should be tailored to comply with the legal framework of the project's jurisdiction. This ensures that the contract is enforceable and that all legal obligations are met. The challenges and strategies for aligning FIDIC contracts with local legal systems, highlighting the need for careful consideration of local laws during contract drafting.

Risk allocation is also a vital component. Particular Conditions should clearly outline the distribution of risks between the employer and contractor. Equitable risk allocation helps in managing potential issues proactively and can prevent conflicts. That effective risk allocation is essential for the smooth execution of construction projects, as it sets clear expectations for all parties involved. Lastly, incorporating dispute resolution mechanisms within the Particular Conditions is essential. Establishing clear procedures for handling

disputes can facilitate timely and cost-effective resolutions. The FIDIC Practice Note provides guidelines on selecting appropriate dispute resolution mechanisms, emphasizing the importance of choosing methods that suit the project's nature and scale.

## **CONCLUSION**

In conclusion, the drafting of Particular Conditions within FIDIC contracts plays a critical role in determining the success of construction projects. Poorly drafted conditions can lead to ambiguities, risk imbalances, and misalignments with local laws, all of which contribute to disputes and inefficiencies. Conversely, best practices, including clear language, alignment with legal frameworks, fair risk allocation, and effective dispute resolution mechanisms, can significantly enhance project execution and minimize conflicts. As construction projects become more complex and operate in diverse jurisdictions, it is essential that Particular Conditions are carefully tailored to suit specific project needs while maintaining consistency with the overall FIDIC framework.

For future research, it would be beneficial to conduct empirical studies examining the practical impact of well-drafted Particular Conditions on the resolution of disputes and the overall efficiency of construction projects. Additionally, exploring how different regions adapt FIDIC contracts to their legal and cultural contexts could provide valuable insights into the effectiveness of various modifications. Further studies could also investigate the role of technology, such as contract management software, in improving the drafting and implementation of Particular Conditions, particularly in large-scale international projects.

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