

A PRACTICAL GUIDE FOR CONTRACT ADMINISTRATION



RED BOOK
2017
CONSTRUCTION
CONTRACT

DETERMINATION CHECK LIST

CONDITIONS OF CONTRACT



STAY
COMPLIANT



REDUCE RISK &
DISPUTES



FAIR &
BALANCED



CLEAR PROCESS,
CONFIDENT OUTCOME



DETERMINATION CHECK LIST

- ☒ Claim or Matter Requiring Determination
- ☒ Review Contract Provisions
- ☒ Information & Submissions
- ☒ Evaluation & Assessment
- ☒ Consultation (if required)
- ☒ Decision / Determination
- ☒ Reasoned Determination
- ☒ Notification
- ☒ Record Keeping



BUILT FOR
PROJECT SUCCESS



SUPPORTING
EFFECTIVE DELIVERY



FOCUS ON
WHAT MATTERS

FIDIC Red Book 2017 (Conditions of Contract for Construction)
DETERMINATION CHECK LIST
Sub-Clause 3.7 — Agreement or Determination

This check list is intended for use by the Engineer (and, where relevant, the Parties) to verify that the procedure required under Sub-Clause 3.7 of the FIDIC Red Book 2017 has been correctly followed whenever the Engineer is required to agree or determine a matter or Claim. It follows the sequence of Sub-Clauses 3.7.1 to 3.7.5. Tick the appropriate box for each item and record supporting comments/evidence in the space provided or in an attached file register.

Project / Contract: _____ **Matter / Claim Ref.:** _____
Engineer: _____ **Date:** _____

A General Principles (Chapeau to Sub-Clause 3.7)

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	The Engineer is acting neutrally between the Parties and is not acting/deemed to act for the Employer in performing this function.	3.7	☐ Yes ☐ No ☐ N/A
2	The matter or Claim being addressed is one which the Conditions require the Engineer to agree or determine under this Sub-Clause.	3.7	☐ Yes ☐ No ☐ N/A

B Consultation to Reach Agreement

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	The Engineer has consulted with both Parties jointly and/or separately and encouraged discussion in an endeavour to reach agreement.	3.7.1	☐ Yes ☐ No ☐ N/A
2	Consultation commenced promptly, allowing adequate time to comply with the time limit for agreement under Sub-Clause 3.7.3.	3.7.1	☐ Yes ☐ No ☐ N/A
3	Unless otherwise proposed by the Engineer and agreed by both Parties, the Engineer has provided both Parties with a record of the consultation.	3.7.1	☐ Yes ☐ No ☐ N/A
4	If agreement was achieved: a Notice titled "Notice of the Parties' Agreement" was given to both Parties within the time limit for agreement, the agreement was signed by both Parties, and a copy of the agreement was included with the Notice.	3.7.1	☐ Yes ☐ No ☐ N/A
5	If no agreement was achieved within the time limit, or both Parties advised the Engineer that no agreement could be achieved: the Engineer gave a Notice to the Parties accordingly.	3.7.1(a)-(b)	☐ Yes ☐ No ☐ N/A
6	The Engineer immediately proceeded to make a determination under Sub-Clause 3.7.2 following the Notice above.	3.7.1	☐ Yes ☐ No ☐ N/A

C Engineer's Determination

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	The Engineer has made a fair determination of the matter or Claim, in accordance with the Contract, taking due regard of all relevant circumstances.	3.7.2	☐ Yes ☐ No ☐ N/A
2	The Notice of determination was given to both Parties within the time limit for determination under Sub-Clause 3.7.3.	3.7.2	☐ Yes ☐ No ☐ N/A

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
3	The Notice states that it is a “Notice of the Engineer’s Determination”.	3.7.2	☐ Yes ☐ No ☐ N/A
4	The determination is described in detail with reasons and detailed supporting particulars.	3.7.2	☐ Yes ☐ No ☐ N/A

D Time Limits

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	The Notice of agreement (if achieved) was given within 42 days, or such other time limit as proposed by the Engineer and agreed by both Parties (the “time limit for agreement”).	3.7.3	☐ Yes ☐ No ☐ N/A
2	The correct commencement date for the time limit was identified: (a) for a matter (not a Claim) – the date stated in the applicable Sub-Clause.	3.7.3(a)	☐ Yes ☐ No ☐ N/A
3	(b) for a Claim under Sub-Clause 20.1(c) – the date the Engineer received the Notice under Sub-Clause 20.1 from the claiming Party.	3.7.3(b)	☐ Yes ☐ No ☐ N/A
4	(c) for a Claim under Sub-Clause 20.1(a) or (b) – the date the Engineer received the fully detailed Claim under Sub-Clause 20.2.4 (or the interim/final fully detailed Claim under Sub-Clause 20.2.6, as applicable).	3.7.3(c)	☐ Yes ☐ No ☐ N/A
5	The Notice of determination was given within 42 days, or such other time limit as proposed by the Engineer and agreed by both Parties (the “time limit for determination”), after the Engineer’s obligation to proceed arose under the last paragraph of Sub-Clause 3.7.1.	3.7.3	☐ Yes ☐ No ☐ N/A
6	If the Engineer did not give the Notice of agreement or determination within the relevant time limit: in the case of a Claim, it is recorded that the Engineer is deemed to have given a determination rejecting the Claim.	3.7.3(i)	☐ Yes ☐ No ☐ N/A
7	In the case of a matter to be agreed or determined, it is recorded that the matter is deemed to be a Dispute, referable by either Party to the DAAB under Sub-Clause 21.4 without the need for a NOD (Sub-Clause 3.7.5 and Sub-Clause 21.4.1(a) do not apply in this scenario).	3.7.3(ii)	☐ Yes ☐ No ☐ N/A

E Effect of the Agreement or Determination

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	The agreement or determination is treated as binding on both Parties, and complied with by the Engineer, unless and until corrected under Sub-Clause 3.7.4 or, for a determination, revised under Clause 21.	3.7.4	☐ Yes ☐ No ☐ N/A
2	Where the agreement or determination concerns payment of an amount between the Parties: the Contractor has included the amount in the next Statement and the Engineer has included it in the following Payment Certificate.	3.7.4	☐ Yes ☐ No ☐ N/A
3	Any typographical, clerical or arithmetical error found by the Engineer within 14 days after giving/receiving the Notice was immediately notified to the Parties.	3.7.4(a)	☐ Yes ☐ No ☐ N/A
4	Any such error found by a Party within the same 14-day period was notified to the Engineer by Notice under Sub-Clause 3.7.4, clearly identifying the error (and, if the Engineer disagreed an error existed, the Parties were immediately advised accordingly).	3.7.4(b)	☐ Yes ☐ No ☐ N/A
5	The Engineer gave a Notice of the corrected agreement or determination within 7 days of finding the error or receiving the Party’s Notice, and the corrected agreement/determination is thereafter treated as the agreement/determination for the purposes of the Conditions.	3.7.4	☐ Yes ☐ No ☐ N/A

F Dissatisfaction with the Engineer's Determination

No.	Checklist Item	Sub-Clause	Status (Yes / No / N/A)
1	If a Party is dissatisfied with the Engineer's determination: a NOD was given to the other Party, with a copy to the Engineer.	3.7.5(a)	☐ Yes ☐ No ☐ N/A
2	The NOD states that it is a "Notice of Dissatisfaction with the Engineer's Determination" and sets out the reason(s) for dissatisfaction.	3.7.5(b)	☐ Yes ☐ No ☐ N/A
3	The NOD was given within 28 days after receiving the Engineer's Notice of determination (or corrected determination under Sub-Clause 3.7.4), or, for a deemed rejection, within 28 days after expiry of the time limit for determination under Sub-Clause 3.7.3.	3.7.5(c)	☐ Yes ☐ No ☐ N/A
4	Following the NOD, it is recorded that either Party may proceed under Sub-Clause 21.4 [Obtaining DAAB's Decision].	3.7.5(d)	☐ Yes ☐ No ☐ N/A
5	If no NOD was given by either Party within the 28-day period: the determination is deemed accepted by both Parties and treated as final and binding.	3.7.5	☐ Yes ☐ No ☐ N/A
6	If the dissatisfied Party is dissatisfied with only part(s) of the determination: that part(s) is clearly identified in the NOD.	3.7.5(i)	☐ Yes ☐ No ☐ N/A
7	That part(s), and any other parts affected by or reliant on it for completeness, is treated as severable from the remainder of the determination.	3.7.5(ii)	☐ Yes ☐ No ☐ N/A
8	The remainder of the determination is treated as final and binding on both Parties as if no NOD had been given.	3.7.5(iii)	☐ Yes ☐ No ☐ N/A
9	If a Party fails to comply with a Sub-Clause 3.7 agreement or a final and binding Engineer's determination: it is recorded that the other Party may refer the failure directly to arbitration under Sub-Clause 21.6, applying the first and third paragraphs of Sub-Clause 21.7 as if to a final and binding DAAB decision.	3.7.5 / 21.6	☐ Yes ☐ No ☐ N/A

G Sign-off

Completed by (Engineer's Representative): Signature: _____ Date: _____	Reviewed by: Signature: _____ Date: _____
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Note: This check list is a practical aid summarising the procedural requirements of Sub-Clause 3.7 of the FIDIC Conditions of Contract for Construction, Second Edition 2017 ("Red Book"). It does not replace, and should be read together with, the full text of the Contract, including Sub-Clauses 20.1, 20.2, 21.4, 21.6 and 21.7 referenced above. It is not a substitute for legal advice.