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# COLLABORATION AND PROLONGATION COST RECOVERY



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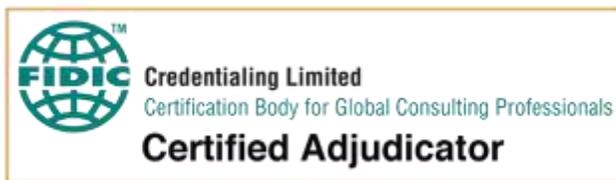


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**Chartered Quantity Surveyor, Adjudicator, Arbitrator, Dispute Board Member, Quantum Expert & Expert Determiner**

- CEO Hanscomb Intercontinental Ltd
- Called to the Bar of England by the Middle Temple July 2017
- Fellow of the Royal Institute of Chartered Surveyors
- Fellow of the Chartered Institute of Building
- Fellow of the Chartered Institute of Arbitrators
- Fellow of the Chartered Institute of Civil Engineering Surveyors
- Fellow of the Institute of Civil Engineers
- Cardiff University Bond Solon / Academy of Experts accredited expert witness
- FIDIC President's List Adjudicator





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# ACCREDITED EXPERTS



# **EXPERTS APPEAR IN**

- **LITIGATION**
- **ARBITRATION**
- **ADJUDICATION**
- **DISPUTE BOARD HEARINGS**
- **MEDIATION / CONCILIATION**
- **EXPERT DETERMINATION**

# **MULTI-DISCIPLINARY EXPERTS**

- **ARCHITECTS**
- **SURVEYORS**
- **ENGINEERS**
- **PROJECT MANAGERS**
- **CONSTRUCTION MANAGERS**
- **ACCOUNTANTS**

# FPSO DISPUTE BRAZIL (AMERICAS)

LCIA - LONDON

- Chemical Engineer (Process)
- Marine Architect (FPSO)
- Mechanical Engineer (Boiler)





## GAS PROCESSING FACILITY TUNISIA (MENA)

ICC – LONDON

- Chartered Mechanical Engineer  
(Commissioning & Start Up)

## PORT MOROCCO (MENA)

### ICC – GENEVA

- Chartered Quantity Surveyor (Quantum)
- Chartered Civil Engineer (Delay)



## WINDFARM TAIWAN (ASIA)

### ADVISORY SERVICES

- Engineer (Project Management)

Expert in MetOcean engineering, numerical modelling of waves and currents for renewable energy projects, ports and coastal areas, data analysis and processing, hydraulic boundary conditions and statistics.



## LNG CANADA (AMERICAS)

### ADVISORY SERVICES – EXPERT DETERMINATION

- Chartered Mechanical Engineer (NDE)



## COAL FIRED POWER STATION (AFRICA)

### ADVISORY SERVICES – QUANTUM & DELAY

- Chartered Quantity Surveyor /  
Civil Engineer (Quantum & Delay)

# COLLABORATION

## collaborative principles when working together:

act in good faith;

communicate and keep each other updated;

act proactively, transparently and flexibly;

dare to raise discussions and concerns, and

settle these in a professional manner; and

dare to flag your own and others' (potential)

mistakes and pitfalls, and actively seek and help

with solutions.

# JCT

## Contracts for collaborative working

Whilst all JCT contracts promote collaborative working, the following contracts are designed specifically to facilitate where a collaborative methodology is desired on a project.



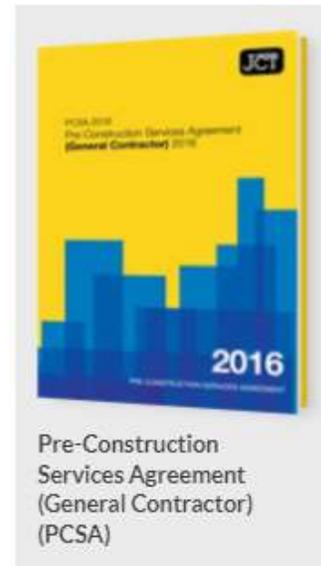
JCT - Constructing Excellence Contract (CE)



JCT - Constructing Excellence Contract Project Team Agreement (CE/P)



Framework Agreement (FA)



Pre-Construction Services Agreement (General Contractor) (PCSA)

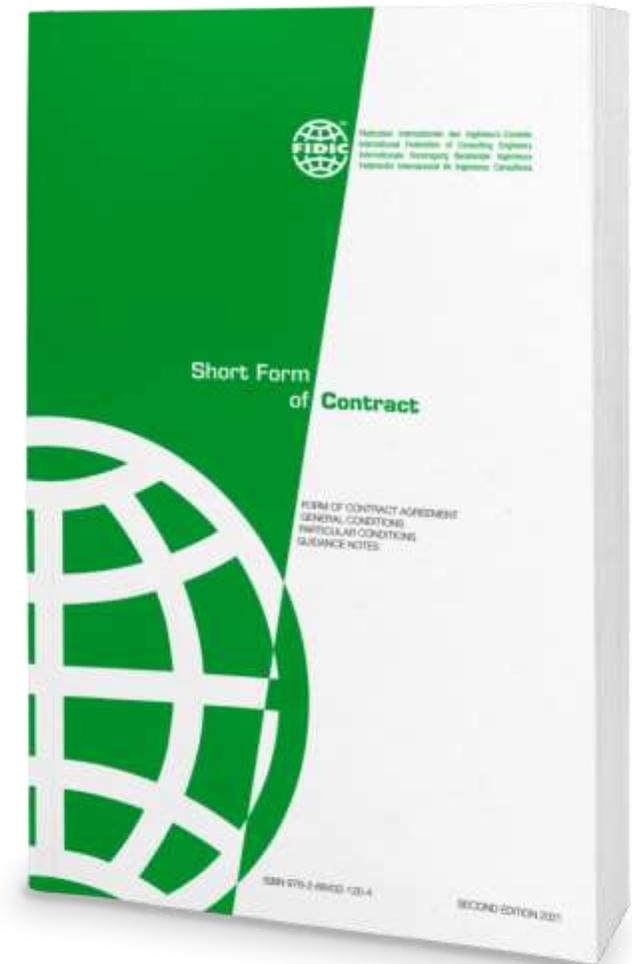


Pre-Construction Services Agreement (Specialist) (PCSA/SP)

# FIDIC

Short Form of Contract 2nd Ed (2021 Green Book)

Contractor is entitled to Prolongation Cost where the Contractor's entitlement is described as 'Cost and/or EOT' or 'Cost Plus Profit and/or EOT', i.e. in respect of an Employer risk event ('ERE') where delay is compensable. The Contractor is not entitled to Prolongation Cost for shared risk events ('SREs') (which give rise to additional time but not money) where delay is excusable.



# FIDIC

Short Form of Contract 2nd Ed (2021 Green Book)

Contract Data details Prolongation Cost calculation

It assumes that construction progress is a Gaussain function (a bell-curve).

The default daily rate for on-Site and off-Site overheads in the Contract Data is 20% of the Contract Price stated in the Contract Agreement, divided by the number of days in the Time for Completion.



# FIDIC

Short Form of Contract 2nd Ed (2021 Green Book)

Contractor is entitled to:

- 60% of this daily rate in the first third of the certified value of the Works (when the Contractor progressively mobilises its resources which are ramping up)
- 125% of this daily rate in the second third of the certified value of the Works (during peak production when resources are expected to be mobilised in full and working at full capacity),
- 60% of this daily rate in the remaining period (when completion is nearing, and demobilisation progressively starts to occur)



# PROLONGATION

SOCIETY OF CONSTRUCTION LAW DELAY AND DISRUPTION PROTOCOL 2nd edition February 2017

*The extended duration of the works during which time-related costs are incurred as a result of a delay.*

*Unless expressly provided for otherwise in the contract, compensation for prolongation should not be paid for anything other than work actually done, time actually taken up or loss and/or expense actually suffered. In other words, the compensation for prolongation caused other than by variations is based on the actual additional cost incurred by the Contractor.*

*Once it is established that compensation for prolongation is due, the evaluation of the sum due is made by reference to the period when the effect of the Employer Risk Event was felt, not by reference to the extended period at the end of the contract.*

# PROLONGATION

## TIME RELATED COSTS – PRELIMINARY ITEMS

- *Head office overheads – staff, lease / hire office, utilities, insurance*
- *Insurance / Bond costs*
- *Large and small plant, equipment*
- *On site preliminaries – hoardings, fencing, security, site huts, cabins, utilities*
- *Loss of profit*
- *Weather related costs*
- *Inflation*
- *Exchange fluctuations*
- *Visas*

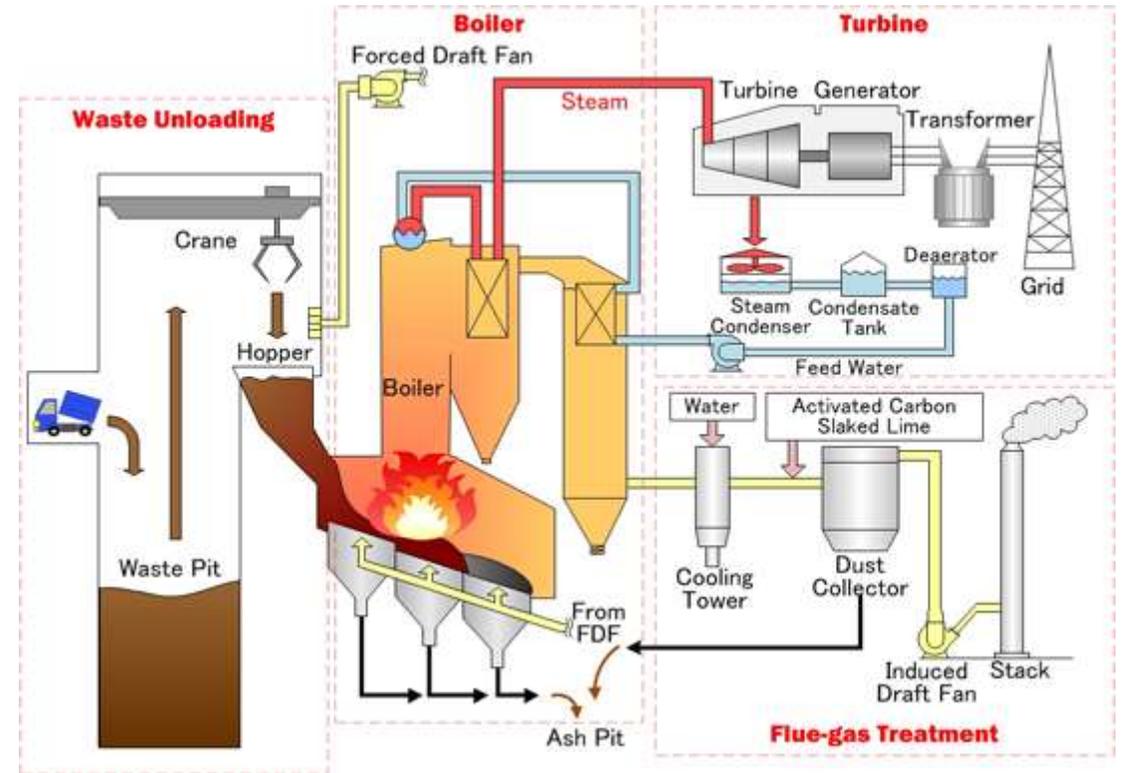
# CASE STUDY

OPTION A NEC – WASTE TO ENERGY PLANT

MAIN CONTRACTOR - CIVILS, BUILDING,

PROCESS CONTRACTOR

PROLONGATION COSTS RECOVERY



*Recovery is via Compensation event  
for Time or Cost*



# CASE STUDY

OPTION A NEC – WASTE TO ENERGY PLANT

CONTRACTOR REFUSED TO SUBMIT COMPENSATION EVENTS IN  
CORRECT FORMAT

FAILED TO PROVIDE UPDATED PROGRAMMES

FAILED TO PROVIDE DELAY ANALYSIS

# CASE STUDY

OPTION A NEC – WASTE TO ENERGY PLANT

PROJECT MANAGER RECOGNISED THAT THERE WAS ENTITLEMENT TO TIME AND COST

HAD INSUFFICIENT INFORMATION TO ASSESS EITHER

CONTRACTOR HAD ALREADY REFERRED TWO DISPUTES TO ADJUDICATOR – LOST ON BOTH DUE TO LIABILITY NOT PROVEN  
Contamination / Piling – RC works and groundworks

QUANTUM – COMPENSATION EVENTS ASSESSED BASED ON LOCAL RATES LABOUR / PLANT



# CASE STUDY

## OPTION A NEC – WASTE TO ENERGY PLANT

Solution on next major compensation event for time and cost

Visited contractor's head office and gathered cost information

Allowed PM to make own assessment prior to adjudication

Time and cost slightly increased in adjudicator's decision from that awarded, significantly less than contractor's assertions

# Conclusion

- Parties and advisers must learn to collaborate even in the absence of contractual provisions to do so
- Prolongation claims require significant amounts of substantiation and records to be reviewed site records / accounting records
- Honesty in dealings makes the process quicker and less painful

# ACCREDITED EXPERTS

