Internationale contractvormen:

FIDIC en NEC

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Erald Kahmann

Clients have access to thought leaders with diverse skills and the ability to anticipate, investigate and resolve complex challenges.

Who we are

HKA is the world's leading consultancy of choice for multi-disciplinary expert and specialist services in risk mitigation and dispute resolution within the capital projects and infrastructure sector.

We also have extensive experience advising clients on the economic impact of commercial and investment treaty disputes and in forensic accounting matters, across all industry sectors.

In addition, HKA supports companies that conduct business with International Governments, providing them with consulting services on complex government contracting matters.

HKA in numbers

people

1,000+
people

including
500+
consultants and advisors

500+
quantum, engineering, architecture and technical, delay, disruption, damages and government contract experts

reach

45+
offices

across
17
countries

experience in
100+
countries

clients

6,500+
clients worldwide

including government agencies, local authorities, investors, developers, owners, operators, architects, engineers, project and construction managers, contractors, specialist suppliers, manufacturers, banks and insurers

instructed by
100%
of the world's
top 20
law firms by revenue

impact

100,000+
disputes resolved

valued in excess of
US$250bn

2,000+
engagements per year

40+ years' experience

30+ of the world's most spoken languages

250+ first-of-a-kind global megaprojects

HKA in Nederland

- Meerdere service lines, waaronder:
  - Contracts, Claims & Expert Witness
  - Forensic Accounting & Commercial Damages
- Al geruime tijd actief in Nederland, m.n. in internationale context
- Sinds 2024 ook gevestigd in Rotterdam (CCE) en Amsterdam (FACD)

Internationalisering

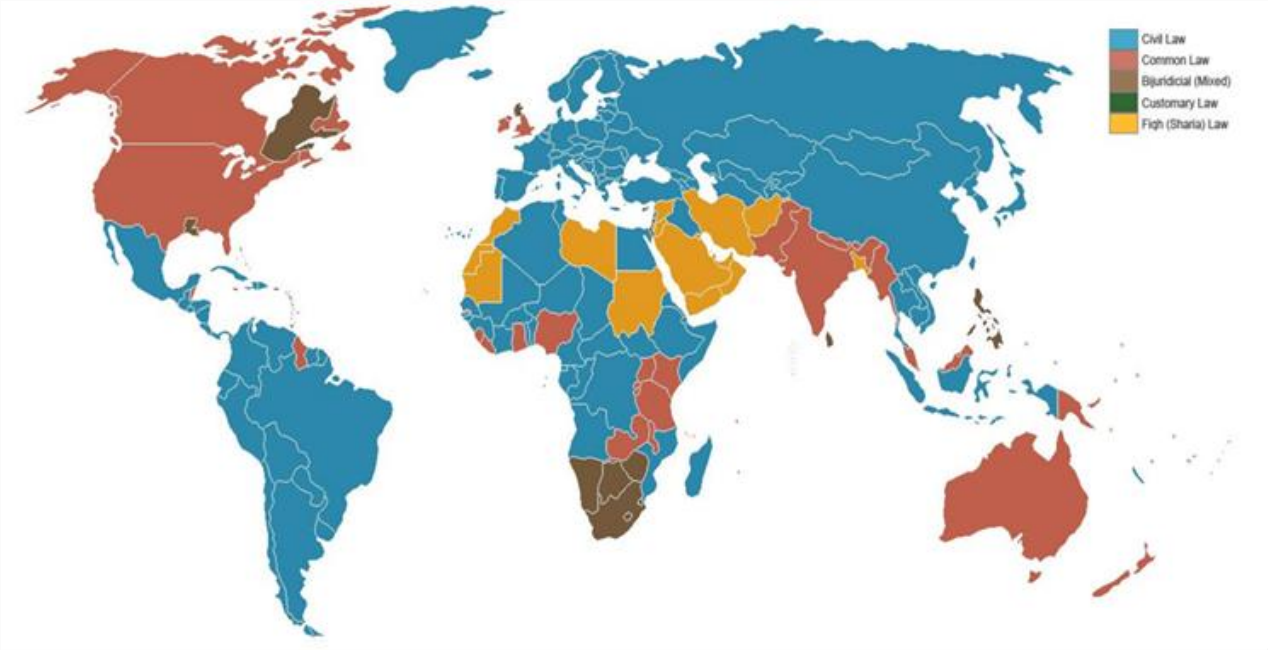
- Historisch is bouw een landelijke aangelegenheid
- Steeds kleiner wordende wereld
- Europese aanbestedingswetgeving
- Specialismes
- Internationale klanten en opdrachtgevers

Internationale contractvormen

- Veel landen hebben lokale standaarden vergelijkbaar met de UAV
- Internationaal onbekend
- Internationaal ruwweg drie soorten voor bouw:
  - FIDIC
  - NEC
  - ‘Bespoke’: eigen voorwaarden van OG
- Voordelen standaarden: bekend, efficientie, duidelijkheid

Oorsprong FIDIC en NEC

- Initiatief vanuit Institution of Civil Engineers (VK)
- Basis in common law
- Nederland = civil law
- Belangrijke verschillen:
  - ‘Letterlijke’ vs ‘figuurlijke’ interpretatie
  - Boetes
  - Plicht tot goede trouw



FIDIC

- Fédération Internationale d’Ingenieurs-Conseils
- Opgericht in 1913
- Voor ingenieurs, door ingenieurs
- Wereldwijd bekend
- Gebruikt door grote, internationale organisaties (oa World Bank en UN)

Kenmerken FIDIC: ‘Books’

- Verschillende standaard contracten, afhankelijk van de aard van het project
- Boeken worden gekenmerkt door kleuren
- Bijzonderheden in Particular Conditions

Kleur	**Jaar**	**Toepassing**
Red Book	1957	Construct-only: traditionele bouwprojecten, ON geen ontwerpverantwoordelijkheid
Yellow Book	1963	Design & build: ON wel ontwerpverantwoordelijkheid
White Book	1990	Dienstverlening
Green Book	1999	Short form of contract: korte looptijd, beperkte contractwaarde
Silver Book	1999	EPCM: Turn-key, Lump Sum. Risico voornamelijk bij ON
Pink Book	2005	Projecten die worden gefinancierd door Wereldbank
Blue Book	2006	Bagger- en landaanwinningsprojecten
Gold Book	2008	Ontwerp, uitvoering, onderhoud: DBO/DBFM
… Book	TBA	Tunnelbouw, ECI/Bouwteam*, Offshore (wind)*

Kenmerken FIDIC

- Procedureel en voorschrijvend
- De ‘Engineer’
- Dispute (Avoidance &) Adjudication Board
- Strikte termijnen

De “gehate FIDIC contractvorm”?

Strikte termijnen

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

FIDIC ‘Golden Principles’

1. Taken en verantwoordelijkheden van Partijen cf General Conditions and passend voor het project
2. Particular Conditions moeten helder en eenduidig worden opgesteld
3. Particular Conditions moeten de risicoverdeling van de GC intact laten
4. Alle van toepassing zijnde termijnen moeten een redelijke duur hebben
5. Geschillen in eerste aanleg oplossen via D(A)AB (voorwaarde voor verdere escalatie)

NEC

- New Engineering Contract
- Sinds 1991
- Doel: Samenwerking en openheid – *“to stimulate good project management”*
- Momenteel versie 4 (NEC4)

NEC - Kenmerken

- Eenvoudig taalgebruik, heldere procedures
- Gericht op samenwerking en voorkomen van geschillen
- Project Manager & Supervisor
  - Early Warning
  - Cl. 10.2: *“Duty to act in a spirit of mutual trust and cooperation”*
  - *Dispute Avoidance Board*

14

NEC – “Opties”

- Doordachte risicoverdeling
- Vooraf gedefinieerd
- Keuze afhankelijk van project
- Main options:

Option A – Priced Contract with Activity Schedule

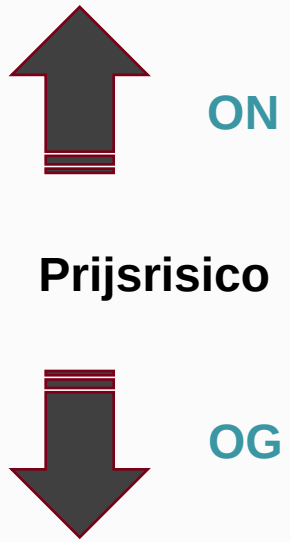
Option B – Priced Contract with Bill of Quantities

Option C – Target Contract with Activity Schedule

Option D – Target Contract with Bill of Quantities

Option E – Cost Reimbursable Contract (% Fee)

Option F – Management Contract



NEC – “Opties”

- Secundaire opties & afspraken over geschilbeslechting

SECONDARY OPTIONS	The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.
Option X1	Price adjustment for inflation (used only with Options A, B, C and D)
Option X2	Changes in the law
Option X3	Multiple currencies (used only with Options A and B)
Option X4	Ultimate holding company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X8	Undertakings to the *Client* or Others
Option X9	Transfer of rights
Option X10	Information modelling
Option X11	Termination by the *Client*
Option X12	Multiparty collaboration (not used with Option X20)
Option X13	Performance bond
Option X14	Advanced payment to the *Contractor*
Option X15	The *Contractor's* design
Option X16	Retention (not used with Option F)
Option X17	Low performance damages
Option X18	Limitation of liability
Option X20	Key Performance Indicators (not used with Option X12)
Option X21	Whole life cost
Option X22	Early *Contractor* involvement (used only with Options C and E)
Option X29	Climate change

	The following Options dealing with national legislation should be included if required.
Option Y(UK)1	Project Bank Account
Option Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996
Option Y(UK)3	The Contracts (Rights of Third Parties) Act 1999

Option Z	*Additional conditions of contract*
Note	Option X19 is not used

RESOLVING AND AVOIDING DISPUTES	One of the following procedures for resolving and avoiding disputes must be selected to complete the chosen main Option.
Option W1	Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply
Option W2	Used when adjudication is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies
Option W3	Used when a Dispute Avoidance Board is the method of dispute resolution and the United Kingdom Housing Grants, Construction and Regeneration Act 1996 does not apply

Compensation events

- Tijdige notificatie verplicht: <8 weken
- Zo niet: recht op compensatie verbeurd

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date or a Key Date are not changed unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision.

FIDIC / NEC

- Procedureel, (vaak) strikter dan UAV
- Flexibel en aanpasbaar aan project
- Uniformiteit: terminologie, procedures
- FIDIC: ‘adversarial’, gericht op eigen rechten partijen
- NEC: gericht op samenwerking

Wat altijd geldt

- Ken je contract
- Houd je aan de afspraken
- Verslaglegging

“A Party to a dispute, particularly if there is arbitration, will learn three lessons (often too late); ***the importance of records; the importance of records; and the importance of records.”***

Neem gerust contact op bij vragen!

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