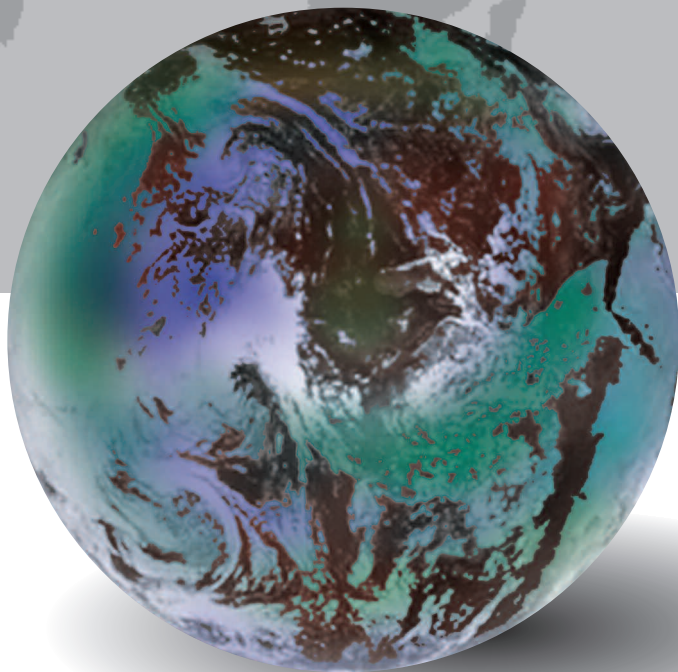


ICC Model Turnkey Contract for Major Projects



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INTRODUCTION

The ICC Commission on Commercial Law and Practice is, like ICC, in business for business, and acts as a focus group for all parties to international transactions. In recent years, the Commission on Commercial Law and Practice has published a number of model forms of contracts. Although the forms have covered a wide range of international transactions, including the turnkey supply of an industrial plant, they have all been distinguished by the imperative that they be fair to all parties to the transaction involved, since ICC represents all parties to all transactions.

There is no uniformly accepted definition of the term “turnkey”. The basic concept is that the contractor shall provide the works ready for use at the agreed price. The reality is that the employer wants to be and should be actively involved in the project at all stages. While this is a turnkey contract, there are articles allowing changes to the contract scope, price and time for completion.

The aim of ICC in producing this form of contract is to provide a balanced contract for the parties to turnkey construction projects, while recognizing the desire of all parties for price and scope certainty, the need for swift and effective dispute resolution, and the need for complete and informed allocation of risks.

Balance has been sought through a number of drafting devices:

1. In several cases, the purpose of the Article is set out at the beginning of the Article. This is to make that purpose plain and avoid interpretation of the Article out of context;
2. Wherever possible, both Parties have equal and mirrored obligations; and
3. As in other ICC model contracts, obligations of good faith are included, with descriptions of what that obligation involves for both Parties.

It was in this spirit that the Task Force on Turnkey Transactions (Major Project Turnkey Contract) approached the subject of an international turnkey contract in the interest of the proper functioning and existence of the construction industry, particularly in its role in international development.

The Task Force has taken the opportunity to address several legal or practical issues its members were concerned with. The Contract is intended to cover all issues that are likely to arise in a clear and succinct fashion to minimize resort to national laws.

The form of the Contract is also meant to be innovative. With the growing importance of information technology it was natural to include detailed provisions on software issues. We also address bribery and corruption in line with the ICC approach in favour of transparency.

The form is equally intended for use in public and private contracts, whether tendered or individually negotiated, as a part of the “BOT” project documentation, and in externally financed projects.

We would be pleased to receive comments and suggestions for further improvements from the users of the contract at turnkeyfeedback@iccwbo.org

FOREWORD

International turnkey construction projects are often complex transactions, requiring correspondingly complex legal documentation. Moreover, many such major construction projects are an important element in international development, and it is vital that the arrangements put in place be durable, clear and equitable.

ICC has prepared this model international turnkey contract for use in major projects, in order to provide contractors and employers with a unique, balanced platform that is fair to all parties. At the same time, the model accommodates the desire of all parties for price and scope certainty, the need for swift and effective dispute resolution, and the need for complete and informed allocation of risks.

The form is equally intended for use in public and private contracts whether tendered or individually negotiated, as a part of the “BOT” project documentation, and in externally financed projects.

This model contract, one of a successful series produced by ICC’s Commercial Law and Practice Commission under the chairmanship of Fabio Bortolotti (Italy), has benefited from the active participation of the following members of the Major Project Turnkey Group, co-chaired by Mr Bortolotti and Robert Knutson (UK): Frances Alderson (UK), Stephen Bailey (France), John Bannerman (UK), Mireille Bouzols-Breton (France), Erik Dormaar (Netherlands), Eric Eggink (Netherlands), Jürg Gassmann (Switzerland), Joachim Goedel (Germany), Francine Gurrat (France), Günther Horvath (Austria), Joseph Huse (US), Bengt Kriström (Sweden), Hans-Volkhard Lempp (Germany), Volker Mahnken (Germany), Pier Francesco Meneghini (Italy), Charles Shankland (France), Isabelle Smith Monnerville (France), and Meinolf Vigener (Germany). Administrative support was provided by ICC Secretariat staff: Jonas Astrup, Emmanuel Jolivet, Emily O’Connor and Corrine Truong.

ICC MODEL TURNKEY CONTRACT FOR MAJOR PROJECTS

.....

(Employer)

and

.....

(Contractor)

This contract contains an arbitration clause and clauses limiting and/or excluding the liability of the Parties in certain circumstances.

TABLE OF CONTENTS

INTRODUCTION	3
FOREWORD	5
ICC MODEL TURNKEY CONTRACT FOR MAJOR PROJECTS	7
MAIN CONTRACT FORM	11
CONDITIONS OF CONTRACT	13
Chapter 1 GENERAL AND PRELIMINARY ARTICLES	13
Chapter 2 THE PARTIES' OBLIGATIONS	23
Chapter 3 THE EXECUTION OF THE CONTRACT	29
Chapter 4 DESIGN – RESPONSIBILITY AND MANAGEMENT; VARIATIONS	37
Chapter 5 COMMENCEMENT; THE TIME TO TAKING-OVER SCHEDULING AND PROGRESS	47
Chapter 6 CONTRACT PRICE AND PAYMENT	55
Chapter 7 COMPLETION AND TAKING-OVER OF THE WORKS BY THE EMPLOYER	59
Chapter 8 DEFECT CORRECTION PERIOD	65
Chapter 9 ALLOCATION OF RISK AND RESPONSIBILITY AND EXCLUSIONS FROM LIABILITY	69
Chapter 10 FORCE MAJEURE AND TERMINATION OF THE CONTRACT	73
Chapter 11 INSURANCE	81
Chapter 12 MISCELLANEOUS PROVISIONS	87
Chapter 13 CLAIMS, DISPUTE RESOLUTION AND ARBITRATION	93
APPENDIX 1	SAMPLE SCHEDULE OF CONTRACTUAL AMENDMENTS 97
APPENDIX 2	PAYMENT AND MILESTONE SCHEDULE GUIDANCE NOTES 98
APPENDIX 3	PAYMENT APPLICATION FORMAT 101
APPENDIX 4	CONTRACTOR'S ACCESS AFTER TAKING-OVER 102
APPENDIX 5	GUIDELINES RELATING TO PERFORMANCE TESTS 104
APPENDIX 6	EMPLOYER'S REQUIREMENTS 106
APPENDIX 7	SAMPLE ADVANCE PAYMENT GUARANTEE 107
APPENDIX 8	SAMPLE PERFORMANCE GUARANTEE 109