

CONTRACTUAL CHANGES – CONTROL VALUE AND MANAGE RISKS

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1. ABSTRACT

Changes during a project are more of a rule than an exception. This is why everyone involved in project business should realize the importance of change management. In the global contracting environment where emphasis is placed on minimizing costs and maximizing performance, poorly managed changes are hazardous.

Change management has to be considered already when planning and negotiating a contract. Proactive contracting will strengthen project performance and eliminate communication difficulties among contracting parties. For a project, it is crucial to carefully define the scope and the other key contractual provisions, which should include a workable dispute resolving mechanism before signing a contract.

Contractors and employers often rely on standard terms and conditions (STCs) to govern their relationship. No doubt, these are helpful instruments, but they should be used with awareness and care. When STCs constitute a part of a contract, it is essential for the contracting parties to truly understand how they allocate costs and risks between the parties and what requirements they set for variations and the communication of claims, notifications, etc.

In this paper, the variations clauses of two STCs, namely Orgalime turn key General Conditions 2003 and FIDIC Silver Book for EPC/turnkey projects, are examined in respect of the following three questions: Who is entitled to initiate variations? When and how is the variation established? Who bears the costs for the variation? The STCs are evaluated from both the employer's and the contractor's point of view and their main differences are discussed. Not surprisingly, the Orgalime turn key conditions seem to be more contractor friendly and the FIDIC Silver Book more employer friendly. Neither of them, unfortunately, seems to provide sufficient detailed change control procedures. Contracting parties should take this into account and address change control issues upfront in their negotiations.

An outline of change control procedure and issues to be addressed are presented in the last chapter. The task of such procedures is to provide efficient tools to agree on changes before they occur and to keep the project on track and within budgetary limits.

2. KEYWORDS

Change management, FIDIC, Orgalime turnkey, variations, changes, standard terms and conditions (STCs), proactive contracting, claim, scope, change control procedures

3. INTRODUCTION

In any project there are likely to be changes to the original plan during the course of the project. This is true also for turn key projects, which are used as examples in this paper. Over the time of project implementation, new issues evolve. When negotiating a contract change management is often overlooked by the dealmakers. The acknowledgement of the mere fact that changes and variations are likely to occur may be seen as a weakness in the contracting process. The members of project teams should, however, not be "blue eyed": On one hand, there are contractors who see an opportunity in changes: charging for changes may improve your results from the project. Employers should be aware of this when negotiating contracts and change clauses. On the other hand there are employers who take an uttermost restrictive view on changes and who will reserve the right to say the final word on a proposed change.

In contractual vocabulary, change is a wide concept. Usually thereby is meant changes to the contract for both external and project internal causes. Herein we use change for claims, variations etc., which

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Table of Contents Contractual Changes Control Value And 3289

1. Understanding the eBook Contractual Changes Control Value And 3289
 - The Rise of Digital Reading Contractual Changes Control Value And 3289
 - Advantages of eBooks Over Traditional Books
2. Identifying Contractual Changes Control Value And 3289
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Contractual Changes Control Value And 3289
 - User-Friendly Interface
4. Exploring eBook Recommendations from Contractual Changes Control Value And 3289
 - Personalized Recommendations
 - Contractual Changes Control Value And 3289 User Reviews and Ratings
 - Contractual Changes Control Value And 3289 and Bestseller Lists
5. Accessing Contractual Changes Control Value And 3289 Free and Paid eBooks

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 - Contractual Changes Control Value And 3289 eBook Subscription Services
 - Contractual Changes Control Value And 3289 Budget-Friendly Options
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 - ePub, PDF, MOBI, and More
 - Contractual Changes Control Value And 3289 Compatibility with Devices
 - Contractual Changes Control Value And 3289 Enhanced eBook Features
 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Contractual Changes Control Value And 3289
 - Highlighting and Note-Taking Contractual Changes Control Value And 3289
 - Interactive Elements Contractual Changes Control Value And 3289
 8. Staying Engaged with Contractual Changes Control Value And 3289
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Contractual Changes Control Value And 3289
 9. Balancing eBooks and Physical Books Contractual Changes Control Value And 3289
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Contractual Changes Control Value And 3289
 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
 11. Cultivating a Reading Routine Contractual Changes Control Value And 3289
 - Setting Reading Goals Contractual Changes Control Value And 3289
 - Carving Out Dedicated Reading Time
 12. Sourcing Reliable Information of Contractual Changes Control Value And 3289
 - Fact-Checking eBook Content of Contractual Changes Control Value And 3289
 - Distinguishing Credible Sources
 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development

- Exploring Educational eBooks

14. Embracing eBook Trends

- Integration of Multimedia Elements
- Interactive and Gamified eBooks

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