

ENGINEERING & CONSTRUCTION RISK INSTITUTE

Document number: ECRI-TC-001 (DESC)	Contract Critical Issues	Page: 1 of 15
Revised: 1 September 2009		

Purpose: The purpose of this document is to highlight the critical contract risks which represent a large majority of the project execution risks applicable to E&C contracts. This document provides a comprehensive analysis of these risks along with proposals for potential remedies.

Introduction: The critical issues discussed are:

- *Force Majeure* relief
- Exclusivity of Remedies
- Limitation of indemnities to third party claims
- Explicit waivers of consequential damages
- Limitation of total amount of contractor liabilities
- Price and schedule relief in the event of change in law
- Specification of standard of care
- Definition of the Change process
- Specification of the dispute resolution process
- Indemnification of contractor with respect to pre-existing environmental conditions
- Prohibition of third party rights to affect contract performance
- Specification of payment details
- Avoidance of on-demand performance bonds
- Price and schedule relief for unforeseeable conditions
- Choice of law governing the contract
- Selection of forum for resolution of disputes
- Prohibition of reference to contractor's work in connection with offerings of securities

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