

WIC Tuesday Talks:

Making an Offer That Can't Be Refused - Negotiating the Top Most Contested Terms in Construction Contracts

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TOP 15

FIRMS FOR FEMALE ATTORNEYS
Law360 Glass Ceiling Report

TOP 25

FIRMS FOR DIVERSE ATTORNEYS
American Lawyer Diversity Scorecard

100%

RATING FOR LGBT ATTORNEYS
Corporate Equality Index

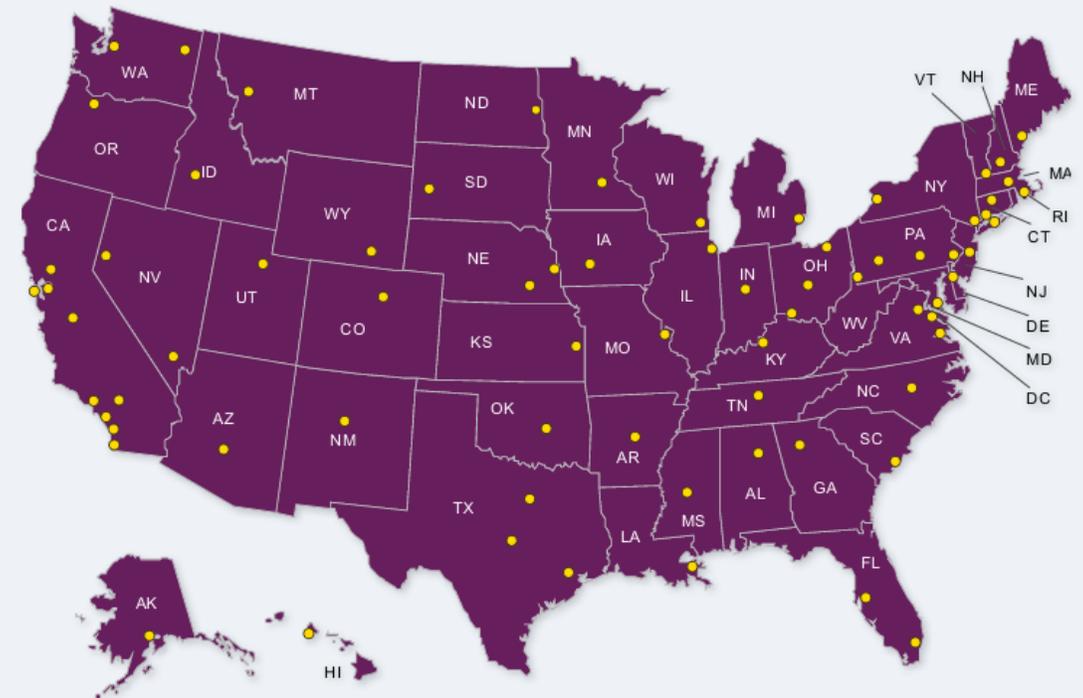
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The Top Ten Negotiated Clauses in a Construction Contract



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Contract Clauses for Discussion:

- Substantial Completion
- Progress and Final Payments
- Change Orders
- Insurance and Bonds
- Warranties
- Indemnity
- Compensation for Delays
- Liquidated Damages
- Withholding Payments
- Termination



Pre-Construction



Jericho

Jericho: The world's largest city in 7000 BC



Dwelling foundations unearthed at Tell es-Sultan in Jericho [wikipedia commons](#)

Uruk

Uruk: The world's largest city in 3500 BC



Uruk as it may have looked [looklex](#)

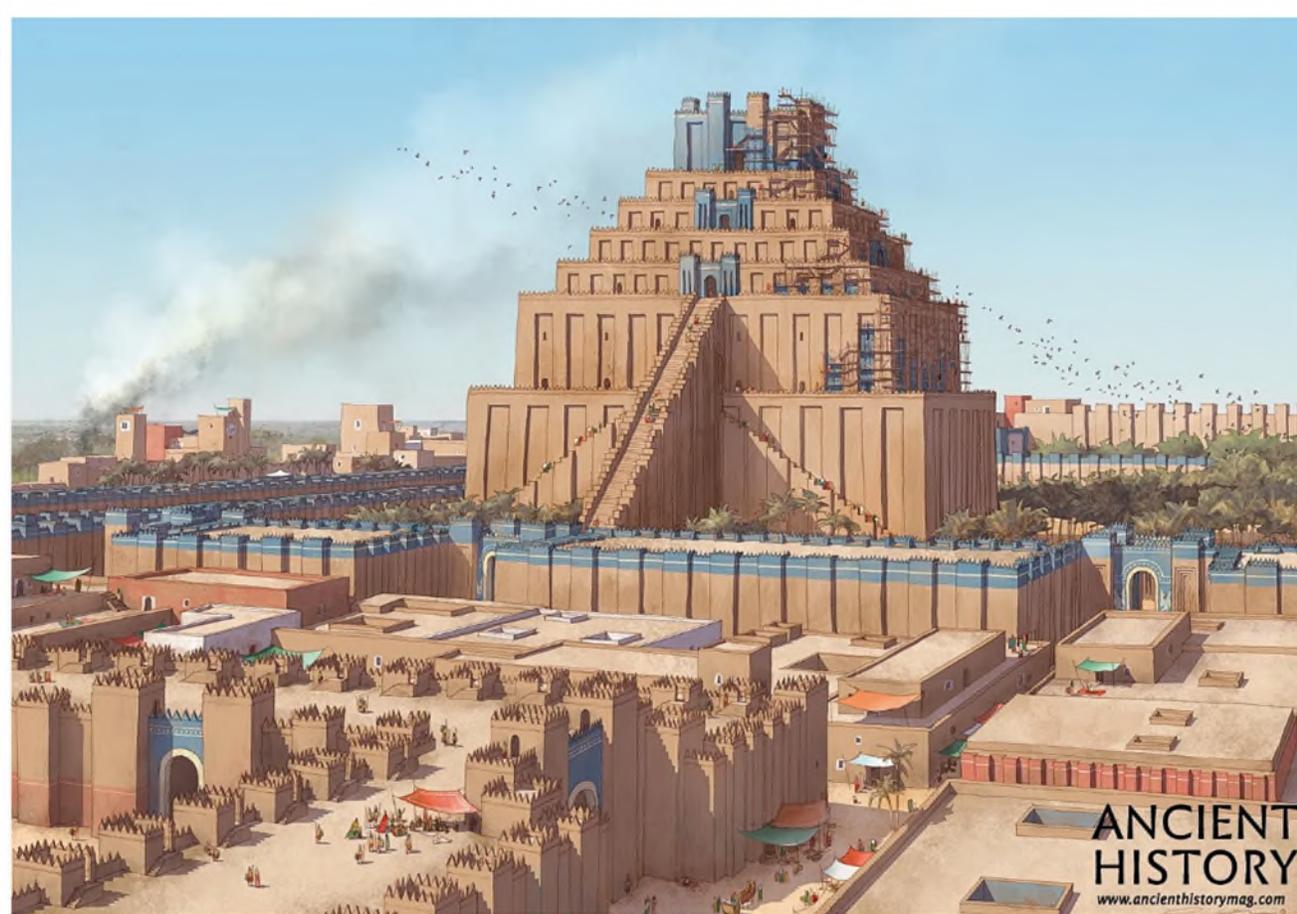
Mari

Mari: The world's largest city in 2400 BC

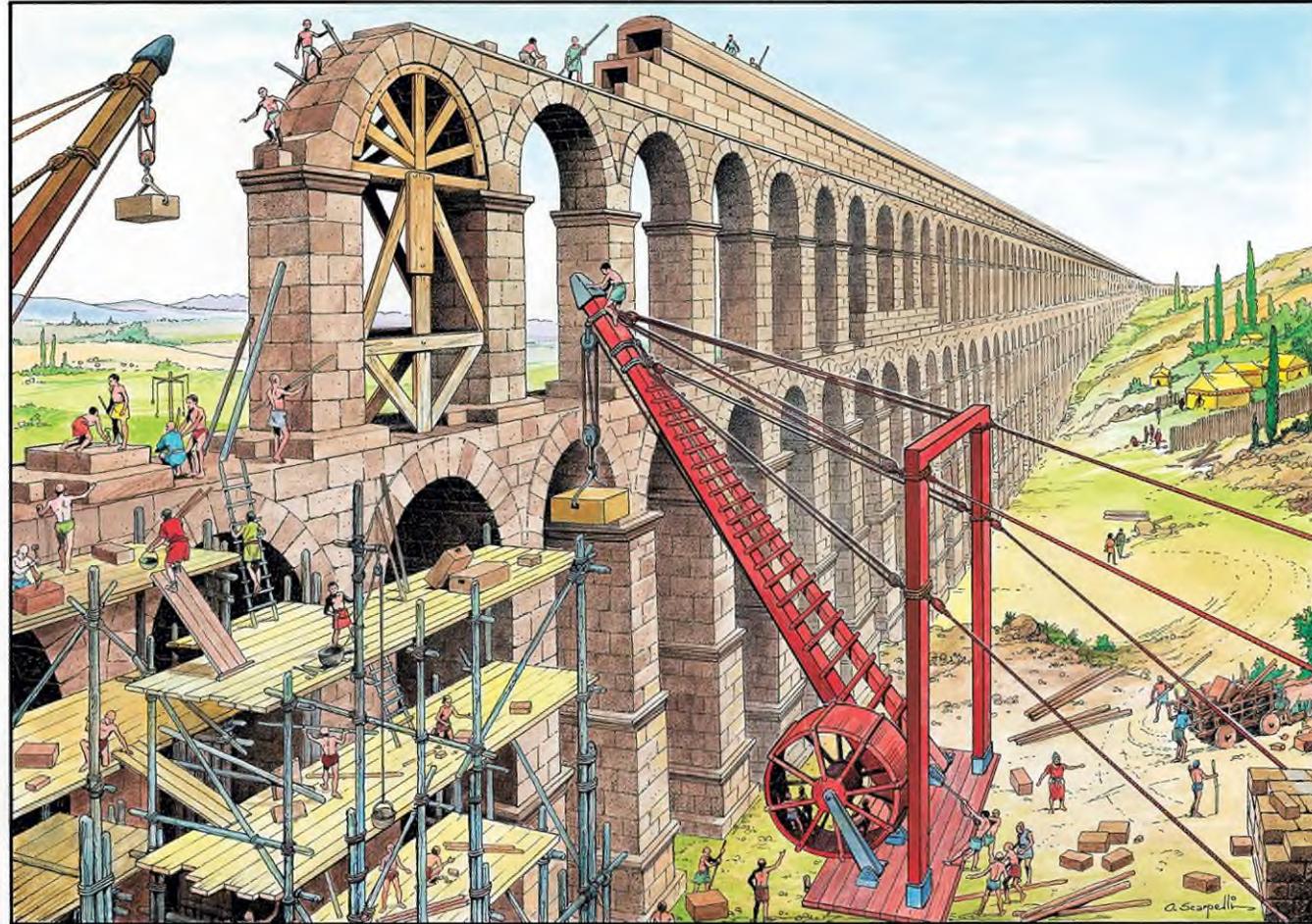


A depiction of the ancient city of Mari, located in present-day Syria [wikipedia commons](#)

Etemenanki



Engineering



Early Contracting



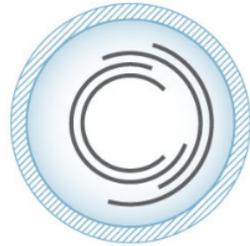
Today: Complex Construction Agreements



Today: Complex Construction Agreements



AIA



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Substantial Completion

- “Substantial Completion”...?



Example

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (ii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iii) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy for the Project.



Progress and Final Payment

1. Timing
2. Retainage
3. Payment Application Approval Requirements
4. “Pay-if-paid” or “Pay-when-paid”
5. The Schedule of Values



Example

§ 9.10 Final Completion and Final Payment

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, or will be paid upon final payment by Owner, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such ~~lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees~~ lien in exchange for which the Owner shall make final payment, or, if no such bond is provided, Owner may withhold the amount of the final payment to the relevant Subcontractor or supplier until such lien is no longer a viable encumbrance.



Example

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed all of the Work required in the Contract Documents except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, as modified, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment ;~~and~~
- .3 a final ~~Certificate for~~ Payment has been issued by the ~~Architect in accordance with Section 11.2.2.2. Owner~~;
- .4 the Construction Manager has satisfied the obligations of § 9.10 of the AIA A201-2007, as amended;
- .5 any and all liens that may have been filed against the Project by any person or entity within the Construction Manager's control have been removed, dissolved and/or bonded;
- .6 all governmental inspections have been conducted and all certificates for which the Construction Manager is responsible have been issued;
- .7 the Construction Manager has delivered to the Owner all Project close-out documents required by the Owner, including, without limitation, the following: (i) as-built drawings of all Work, including both hard copies and .pdf files, as well as as-built specifications; (ii) all warranties required to be obtained by the Construction Manager under the Contract; (iii) maintenance manuals, instructions, information sheets, and specifications pertaining to all equipment, appliances, roofing, and other items installed; and (iv) all other submittals required under the Contract Documents, in a form acceptable to the Owner; and
- .8 the Construction Manager has delivered an executed Final Release and Waiver of Liens, in a form acceptable to the Owner, from the Construction Manager and any Subcontractor and/or Material Supplier that the Owner may reasonably require.



Change Orders

- Notice and Writing Requirements
- Allowable Mark Up
- Classic Tug and Pull Re: Design Responsibility
- Technical Provisions



Example

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument ~~prepared by the Architect and~~ signed by the Owner and Contractor ~~and Architect~~, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

The Architect's signature on a Change Order indicates its recommendation of the change but shall not be a condition to its validity.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement by the Contractor of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time, and the construction schedule. In no event shall a Change Order include or any other relief prohibited by the Contract Documents.



Insurance and Bonds Negotiations

Typical coverages:

- Builder's risk
- General liability
- Workers compensation
- Automobile liability
- Errors and omissions
- Property insurance for tools/equipment



Insurance and Bonds Negotiations

Other types:

- Railroad Liability
- Pollution
- OCIP
- CCIP
- Subguard



Insurance and Bonds Negotiations

Additional Insureds:

- Owner
- Design Team
- Landlord
- Upper Tier Contractor
- Track Indemnitees



Waivers of Subrogation

- **§ 11.3 Waivers of Subrogation**
- **§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, property damage, personal injury or other causes of loss, to the extent those losses are covered by any insurance required by the Agreement or other insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.
- **§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.



Warranties

1. Warranty Period and Commencement Date
2. Manufacturer's Warranties
3. Assignment of Warranties to Owner
4. Expiration of Warranty Period No Bar to Claims
5. NO Gaps between Tiers



Warranties: Example

- **§ 3.5 Warranty**
- **§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment
- **§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.



Warranties: Example

AIA 201: Modified Private Owner

§ 3.5 Warranty

§ 3.5.2 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law, and subject to the provisions of § 12.2.2 hereof, all warranties shall be for a period of twelve (12) months from the date of Substantial Completion, and shall be in form and content consistent with industry standards. Warranties shall become effective upon Substantial Completion of the entire Project. The Contractor's warranty obligations shall survive acceptance of the Work by the Owner and Architect and termination of the Contract. The Contractor's warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents. Contractor agrees to assign to the Owner at Final Completion any and all manufacturers warranties relating to the materials and labor used in the Work and to perform any Work so as to preserve any and all such manufacturers warranties.



Indemnification

Transferring the Risk – Indemnification

- Types of Indemnification
 - » Common Law
 - » Contractual
- Terminology
 - » Indemnitor
 - » Indemnitee



Indemnification

Transferring the Risk – Indemnification

– Types of Indemnification Provisions

- » **Broad Form – contractor indemnify owner even if owner 100% at fault**
- » **Intermediate Form – contractor indemnify owner so long as owner not 100% at fault**
- » **Narrow Form – contractor indemnify owner to the extent the loss is due to the fault of contractor**

Indemnification

Transferring the Risk – Indemnification

When Reviewing the Provision

IDENTIFY THE

• **TRIGGER** ury...

- **NOTE:** Does the indemnity exceed where claim was the result of a third party's negligence?



Indemnification

§ 3.18 Indemnification

- **§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.
- **§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.



Indemnification Negotiations

Most commonly negotiated...

- Limiting indemnity obligations to items for which it can obtain insurance
- The Trigger
- ID Indemnitees
- Broad, Intermediate or Narrow?

Balanced Indemnity Provision Limits Indemnity To...

- (1) Personal Injury and Property Damage
- (2) Third-Party Claims
- (3) Narrow Form



Example

§ 3.18 Indemnification

- § 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants~~, and its agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), **but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable**. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. **In no event shall the Architect, any other designer, Owner consultant or Separate Contractor be entitled to indemnification under this Agreement.**



Example

- § 3.18 Indemnification
- § 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work and this Contract and/or the breach of any duty or obligation of the Contractor under this Contract and/or any violation of any building code or other law, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.
- § 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- § 3.18.3 The provisions contained in Section 3.18 shall survive termination of the Agreement.



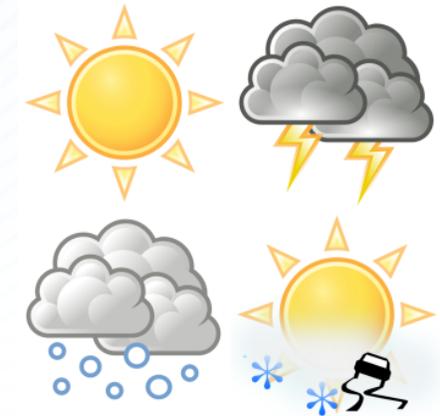
Compensation for Delays

- AIA A201, Paragraph 8.3
- “No-damage-for-delay”
- Non-compensable time extensions



Delays and Damages Negotiation

1. Costs for Owner acceleration or suspension
2. Workforce supplementation
3. Extended Duration Costs
4. Weather
5. Customized clauses



Example

§ 8.3 Delays and Extensions of Time

• § 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work due to no fault of its own and by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by reasonably unforeseeable labor disputes, fire, ~~unusual~~ unavoidable delay in deliveries, unavoidable casualties, ~~adverse~~ abnormally severe weather conditions documented in accordance with Section 15.1.6.2, ~~or other causes beyond the Contractor's control~~; (4) by delay authorized in writing by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Architect~~ Owner determines, justify delay, then provided that Contractor has complied with its obligations hereunder the Contract Time shall be extended for such reasonable time ~~as the Architect may determine as may be required.~~ The Contractor acknowledges and agrees that shortage of funds or inadequate capitalization on its own behalf shall not excuse its non-performance as a force majeure event or otherwise, and the Contractor shall bear all risk of monetary loss and delay. Should an event or occurrence affect the Contractor's ability to perform hereunder, the Contractor shall use its best efforts to eliminate the cause of such inability to perform and shall perform to the fullest extent it is able under the circumstances.



Example

§ 8.3.3 This section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. The Contractor's sole remedy for delays excusable under § 8.3.1 is an extension of time. The Contractor waives all claims for any compensation whatsoever due to delays, accelerations, out of sequence work or other events resulting in a delayed completion including, without limitation general condition costs, overhead damages, claims for allocated portions of indirect or general overhead expenses, and claims for loss of productivity arising from delays, incurred by it or anyone claiming through it.

§ 8.3.4 The Contractor shall not be entitled to costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

§ 8.3.5 If, in the opinion of the Owner, the Contractor falls behind the approved schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.



Example

§ 8.3.6 Requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method construction schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

§ 8.4 The Contractor shall not be entitled to an adjustment of the Contract Time on account of delays: (i) that it could have avoided or mitigated using its best professional efforts; (ii) that do not impact the critical path; (iv) that were caused by, or could have been reasonably anticipated by, the Contractor or those for whom it is responsible; or (vi) that could have been mitigated or avoided by the Contractor's timely notice to the Owner as required hereunder.



Example

§ 8.3 Delays and Extensions of Time

- § 8.3.1 If the Contractor is delayed or interfered with at any time in the commencement, planned sequence or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes ~~that the Contractor asserts, and the Architect determines, justify delay, beyond the Contractor's Control,~~ then the Contract Time and Contract Sum shall be adjusted accordingly shall be extended for such reasonable time as the Architect may determine.
- § 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- § 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

Liquidated Damages

- Amount?
- Consider in Context of Mutual Waiver of Consequential Damages



Liquidated Damages – A201

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. **Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages,** when applicable, in accordance with the requirements of the Contract Documents.

Liquidated Damages

1. Trigger?
2. Grace periods
3. How assessed
4. Cap on liquidated damages



Example – Liquidated Damages

- In the event that such liquidated damages are not enforceable under governing law, the Owner shall be entitled to recover actual damages for delay.
- The liquidated damages set forth herein apply solely to consequential/indirect damages for delay in completion of the Work, and shall in no way limit the Owner's recovery of other damages or the Owner's entitlement to non-damages remedies.
- Accrued liquidated damages that are properly owed by the Construction Manager to the Owner may be offset from any payment due from the Owner to the Construction Manager, or, at the Owner's option, are payable by the Construction Manager within thirty (30) days of demand from the Owner.



Withholding Payment

- More opportunities for Owner protection
- Role of “the Architect”



Examples

§ 9.5.1 The ~~Architect may withhold a Certificate for Payment~~ Owner may withhold payment on an Application for Payment, in whole or in part, to the extent reasonably necessary to protect the ~~Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made.~~ If the ~~Architect~~ Owner is unable to ~~certify~~ approve payment in the amount of the Application, the ~~Architect~~ Owner will notify the Contractor ~~and Owner as~~ provided in Section 9.4.1. If the Contractor and ~~Architect~~ Owner cannot agree on a revised amount, the ~~Architect~~ Owner will ~~promptly~~ issue a ~~Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner~~ payment in the approved amount. ~~The Architect may also withhold a Certificate for Payment, for,~~ The Owner may withhold payment because of subsequently discovered evidence, may nullify the whole or a part ~~of a Certificate for Payment~~ an approved payment previously issued, to such extent as may be necessary in ~~the Architect's opinion to protect the Owner~~ the Owner's opinion to protect itself from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers or for mechanic's liens or claims of nonpayment by Subcontractors or suppliers of any tier for services for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents.



Termination Provisions

1. Termination for Cause
2. Termination for Convenience
3. Suspension of the Work



Termination Provisions

- **Termination for Convenience Considerations**
 - Notice
 - Compensation
 - Assignment of Subcontracts
- **Owner Termination for Cause**
 - Notice --- and Right to Cure
 - Compensation
 - Assignment of Subcontracts
 - Dispute Resolution
- **Suspension of the Work**
 - Notice and Compensation

Example: Termination Due to Suspension - AIA 201

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped for more than 120 consecutive days;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped for more than 120 consecutive days;
- .3 ~~Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1~~, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents after notice has been provided pursuant to Section 9.7.;
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~



Example: Termination for Convenience - AIA 201

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. ~~No adjustment shall be made to the extent~~

~~.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or~~
~~.2 that an equitable adjustment is made or denied under another provision of the Contract.~~



Example: Termination for Cause – A201

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

Questions?



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