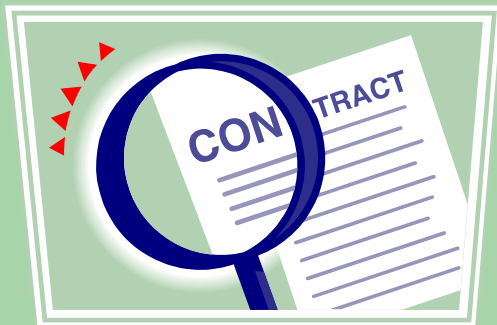


REVIEWING AND REVISING CONSTRUCTION CONTRACTS



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Construction Law Survival Manual

- Credit Management
 - Fair Credit Reporting Act
 - Equal Credit Opportunity Act
- Contracts and Preserving Rights
 - Drafting Credit Applications, Quotes, Guarantees, Joint Check Agreements
 - Reviewing and Revising Contracts
- UCC Sale of Goods
- UCC Security Agreements
- Default & Termination

- Mechanic's Lien General Principles
- Mechanic's Liens in Virginia, Maryland, Pennsylvania and District of Columbia
- Payment Bonds
- Trust Fund Laws and Agreements
- Enforcement of Judgments
- Bankruptcy Primer for Creditors
 - What to do when your debtor files bankruptcy
 - Defending preference claims

Construction Law Survival Manual is
available

in NACM Bookstore

in NACM Reference Library

At www.FullertonLaw.Com



➤ Contract terms will not prevent all problems.

➤ If you do business with the wrong people, you will have problems.

➤ If you supply the wrong project, you will have problems.

Do Contract Terms Matter?

- Contract terms usually do not matter.
- Does this mean contract terms are unimportant?

- Contract terms are about:
 - Leverage
 - Cost
 - Risk



Attorney's Fees and Service Charges

In any action or proceeding involving a dispute arising out of this agreement, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by a court or arbitrator.

- Leverage
- Cost
- Risk



Reviewing Contracts Received from Others

- Business realities
 - Customer will insist on their form
- Looking for 5 “Greatest Hits”
 - Things that are most likely to cause real life problems
 - Things that you can get customer to change
 - Things you can change with small number of words

Incorporate Proposal or Quote

Provision in your Quote:

It is agreed that this proposal shall be incorporated into and shall become a part of any further or additional agreement made for this job.

Add provision to reviewed contract:

Subcontractors proposal dated the ___ day of _____ 20__ is incorporated herein by reference.

Unilateral Attorney's Fee Provision

If Subcontractor breaches this contract, Subcontractor shall be responsible for all attorney's fees incurred.

Change to Bilateral Attorney's Fee Provision

If ~~Subcontractor~~ either party breaches this contract, ~~Subcontractor~~ they shall be responsible for all attorney's fees incurred.

Add Bilateral Attorney's Fee Provision

In any action or proceeding involving a dispute arising out of this agreement, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees to be determined by a court or arbitrator.

Notice and Opportunity to Cure

- If subcontractor breaches any provision of this contract, then contractor may declare this contract in default and terminate this contract on written notice to contractor.
- If subcontractor breaches any provision of this contract **and subcontractor does not begin to diligently cure such breach, within 10 days after receiving written notice specifying the breach**, then contractor may declare this contract in default and terminate this contract on written notice to subcontractor.

Waiver of Mechanic's Lien and Bond Claims

Find them and cross them out.

Forum Selection Clause

Subcontractor agrees that the forum for any litigation pursuant to this Agreement, whether Subcontractor or Contractor brings suit, shall be the Orange County, California. This Agreement shall be governed by and construed in accordance with the laws of California.

Delete or change to your forum

Forum Selection Clause

Contractor expressly agrees to submit to personal jurisdiction in Virginia and agrees that the forum for any litigation pursuant to this Agreement or any other contract between Subcontractor and Contractor, whether Subcontractor or Contractor brings suit, shall be the County of Fairfax, Virginia. This Agreement shall be governed by and construed in accordance with the laws of Virginia.

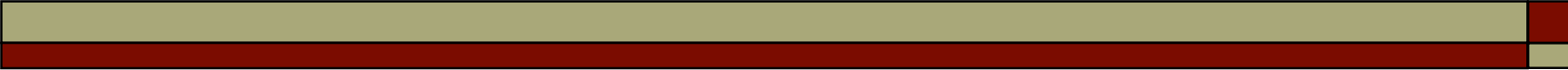
Trust Fund Agreement

Contractor agrees that all funds received by Contractor relating to materials supplied by Subcontractor shall be held in trust for the benefit of Subcontractor. Contractor may commingle Trust Funds with Contractor's own funds.



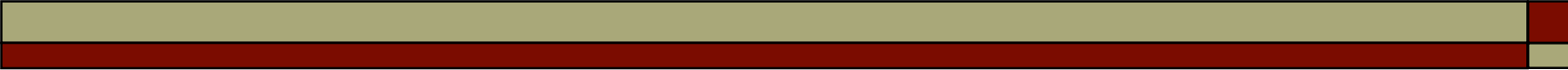
Breach, Insecurity and Adequate Assurance

- ❖ Subcontractor shall have no obligation to begin or continue performance until adequate credit and funding information is provided on request of Subcontractor.
- ❖ Subcontractor may stop the manufacture or supply of any labor or materials when payments stop pursuant to this agreement until payment is made or any other dispute has been resolved.



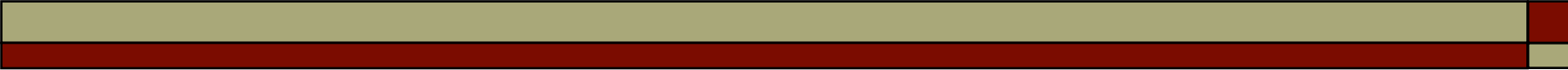
Contract Schedule Unilateral Amendments

- Contractor, in its sole discretion, from time to time as circumstances may require change the time periods or durations or the sequence of work set forth therein.



Contract Schedule Unilateral Amendments

- ❑ The Subcontractor will proceed with the work in a prompt and diligent manner, in accordance with the Contractor's schedules as amended from time to time. The Subcontractor will be liable to the Contractor for failure to adhere to the Contractor's schedules, including amendments, even if such schedules differ materially from schedules set forth in the Contract Documents or the time of completion called for by the Contract Documents. **TIME IS OF THE ESSENCE.**



Contract Schedule Unilateral Amendments

Time is of the essence of this subcontract.
Subcontractor agrees to start work within 48
hours of written notice and to complete its work
in accordance with the general contractor's
schedule as established and amended from time to
time.



Contract Schedule

- ✿ Want definite schedule
 - ✿ Start date – Finish date/number of days
- ✿ Cannot agree to unknown schedule
- ✿ Cannot agree to modification without agreement



Force Majeure

These dates reflect the Subcontractor's best estimates and assume normal job, site and weather conditions, the availability of materials, the prompt cooperation of the General Contractor and Owner, and free access to all work areas. Subcontractor is not responsible for delays caused by conditions beyond its control.



Reviewing Contracts Received from Others

- Have your own Addendums Available

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Conduit or Pass Through Provisions

- The provisions of the general contract are incorporated herein by reference
- The subcontractor shall be bound to the general contractor to the same extent that the general contractor is bound to the owner

Conduit or Pass Through Provisions

- Get a copy of the general contract
 - Go to GC office, if necessary
 - Request in writing

- Claims procedure
- Dispute resolution procedure

Claims Provisions

- Claims procedures in contract
- Must follow exact procedure in contract

- When to give notice
- To whom to give notice

- Form of Claim
- Quantification of time and money impact

- Means what it says
- Big Boy Rule

Dispute Resolution

- Litigation
 - Arbitration
 - Mediation
 - Dispute Resolution Procedure
 - Must submit to Contracting Officer, Architect
 - Must file suit within 30 days after decision
- =Must know these procedures to preserve claims

Dispute Resolution Clause

Any dispute resolution or arbitration clause shall not impact, negate or delay any bond or mechanic's lien rights pursuant to any statute or agreement.

Pay When Paid

- Pay When Paid
 - Will pay within 10 days of receipt of payment from Owner.
- Pay if Paid
 - It is an absolute condition precedent to general contractor's obligation to pay subcontractor that general contractor receive payment from the owner.

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