

CONTRACT MANAGEMENT

Chapter Survey...

- ⇒ *Required Contract Elements*
- ⇒ *Contract Provisions*
- ⇒ *Breach of Contract*
- ⇒ *Boilerplate Provisions*
- ⇒ *Provisions to Limit Risk*
- ⇒ *What Are Recitals?*
- ⇒ *Types of Construction Contracts*
- ⇒ *Contracting Methods*
- ⇒ *Sources of Contracts*
- ⇒ *Making Changes to the Contract*
- ⇒ *Resolving Claims*
- ⇒ *Alternative Dispute Resolution*
- ⇒ *Making Substitutions*
- ⇒ *Contract Documents and Project Manual*
- ⇒ *Are Oral Agreements Legally Binding?*
- ⇒ *Legal Interpretation*
- ⇒ *Subcontracting*



Legally Speaking: Contracts are legally binding agreements between two or more parties. The main purpose of contracts is to prevent disputes between parties entering into an agreement. Many times, agreements are made verbally, but it is best to get a contract in writing.

Contracts serve many purposes, including:

- ✓ Defining the obligations of the agreement
- ✓ Outlining payment terms
- ✓ Limiting the liability of the parties involved

Contracts need to be worded carefully to protect your company. It is recommended you consult with an attorney experienced in construction law to ensure you have a legally enforceable contract.

Required Contract Elements

Make it Binding: You may have reached an agreement to do work for a customer, but that does not mean that you have a contract. There are four key elements that must be in effect to make a contract binding.

- ✓ Offer and Acceptance
- ✓ Consideration
- ✓ Competent Parties
- ✓ Legal Purpose

Offer and Acceptance

The Offer is on the Table: An offer specifically outlines the obligations of the contract, including the work to be done and compensation for this work. When you submit an estimate or bid for work, this is considered an offer. All parties must be clear on the essential details and obligations of the contract to have a valid offer. Once an offer is made, you are bound to what you have agreed to do.



An offer generally has a specific amount of time in which an acceptance needs to be made; this timeframe should be stated in the offer. If a deadline for acceptance is not outlined in the offer, it expires in a "reasonable time." Reasonable time is up to court interpretation and is considered on an individual case basis.

Negotiation: Negotiation is the process where the owner and contractor come to an agreement on the price and terms of the contract. Chapter 9 discusses techniques that help guide you through the negotiation process. An offer is usually the outcome of a negotiation, but parties are not bound to the contract terms until an offer is made and acceptance is achieved. It is important to be clear when a communication is for negotiation purposes so it is not misconstrued as an offer.

Acceptance: The next step of the process is acceptance. Acceptance is agreeing to the offer made and generally is done by signing the offer. In some cases, a counteroffer is made. A counteroffer is not considered acceptance. It is only when both parties agree to the contract terms that you obtain acceptance.

Offer Checklist: Your offer should contain certain components because, if accepted, you are contractually bound to it:

- ✓ Date of offer
- ✓ Names and contact information of contracting parties
- ✓ Name and location of project
- ✓ Description of the work to be performed
- ✓ Contract time or start and completion date
- ✓ Payment terms, including progress payment schedule and final payment
- ✓ Conditions for schedule delays
- ✓ List of contract documents, including general conditions, drawings, and specifications
- ✓ Contract sum, including contract type such as lump sum, unit price, or cost plus (discussed later in this chapter)
- ✓ Expiration date of offer

Once accepted, this agreement becomes part of the contract's Standard Form of Agreement.

Consideration

An Exchange: Both parties must give up something of value to have consideration. Most likely this will be money, but it could be anything of value. Payment terms should be clearly outlined in the contract. Typically, the contractor provides services and in exchange, the owner provides monetary compensation.

Competent Parties

Legal Capacity: The parties in agreement should have the legal capacity to enter into a contract. Simply put, the parties must both be of sound mind in order for the contract to be valid. A situation where parties may not have legal capacity might be if you contracted with someone who is heavily under the influence of drugs or alcohol. The courts may rule someone

incompetent if they are mentally disabled. Minors are prohibited from entering into contracts without parental consent.

Legal Purpose

Contracts must be possible to perform, not intended to harm anyone, and cannot require any illegal activity. For example, a contract that requires the contractor to build a house that does not comply with building codes does not have a legal purpose and is invalid.

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Consult with an attorney to ensure your contracts are legally enforceable.
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Contract Provisions

Make it Clear: Contracts should be clear and concise. It is important that both parties understand the terms of the contract. There are provisions that you need to include in your contracts to ensure that all details are clearly outlined. Provisions are simply clauses that outline the stipulations of the contract.

Key Contract Provisions: Contracts are full of provisions, but a few key ones you will want to include:

- ✓ Contract Price and Payment Terms
- ✓ Obligation of the Parties
- ✓ Supplemental Conditions
- ✓ Breach of Contract

Contract Price and Payment Terms

Getting Paid: The contract should specify how the contract price is calculated. Whether you choose to use a lump-sum, unit-price or cost-plus method, include all fees the customer is expected to pay.

Payment terms should be very specific and include:

- ✓ Who is issuing payment
- ✓ Amount of the payment
- ✓ Form of payment
- ✓ When the payment will be issued

Progress Payments: Progress payments are partial payments made after specified phases of construction are complete. Payments are generally calculated by taking the difference between the completed work and materials delivered and a predetermined schedule of unit costs.

Requirements for the schedule of progress payments should be clearly outlined in the construction contract, including:

- ✓ Number of payments
- ✓ Amount of each payment
- ✓ Stage of progress between payments
- ✓ Date or stage when each one is due

It is important to monitor the progress payment schedule to ensure timeliness. You may be required to submit a partial payment estimate to the project architect or engineer prior to the payment due date. The partial payment estimate outlines the work performed and proof of materials and equipment delivery required for the next stage of construction. The architect or engineer certifies each progress payment by confirming the information in the partial payment estimate.

Progress payments have two functions: one, to protect the owner by holding the contractor responsible for following the planned schedule, and two, to allow the contractor to pay for labor and material expenditures as they occur. This method of payment also protects both parties in the event of a contract breach on either side.

Retainage: Retainage is used by the owner to ensure completion of the construction project and provide protection against liens, claims, and defaults. It is calculated as a percentage (generally 10 percent) withheld from each progress payment. The retainage amount may be reduced further after substantial completion of the project (for example, retainage amounts may drop to 5 percent after 75 percent completion of the project). Retainage amounts must be clearly stated in the construction contract. Prime contractors generally hold the same percentage of retainage for their subcontractors.

The architect or engineer certifies when the project is complete and the work meets the conditions of the contract documents.

The retained amounts are generally due to the contractor upon completion and acceptance of the work.

Final Payment: Once the structure can be used for its intended purpose, the architect issues a certificate of substantial completion. A certificate of occupancy, issued by a building inspector, deems the structure meets all applicable codes and is safe for occupancy.

Final payment is generally due when all punch list items are complete as agreed between the owner and contractor, proper approvals are obtained, and all paperwork is complete.

To receive a final payment, the following documentation should be prepared and delivered to the owner upon completion of the project:

- ✓ Completion certificates issued by the architect
- ✓ Inspection certificates
- ✓ Guaranties and warranties
- ✓ Affidavits that all subcontractors and project bills have been paid
- ✓ Equipment operation manuals
- ✓ Final lien waivers for those who submitted preliminary notices
- ✓ Final project as-built drawings
- ✓ Any other documents as required by contract

It is important to organize paperwork throughout the construction process. A delay in putting the final paperwork together can consequently delay the final payment.

Obligations of the Parties

Contract Conditions: The obligations of the parties should be specifically outlined in the contract and include both the contractor's obligations and the owner's obligations. The obligations of the parties are the contract conditions.

Contractor's obligations include but are not limited to:

- ✓ Having proper licensure
- ✓ Securing building permits
- ✓ Ordering all materials and supplies and arranging for site delivery
- ✓ Furnishing all labor, including obtaining required subcontractors to complete the job
- ✓ Completing all work in compliance with all applicable codes and scheduling inspections on a timely basis
- ✓ Completing all work according to plans and specifications
- ✓ Keeping the construction site clean and removing all debris during and upon completion of construction

Owner's obligations include but are not limited to:

- ✓ Ensuring prompt approval of contract documents, plans and specifications is complete and reflect the scope of work the owner requires
- ✓ Ensuring project meets zoning specifications
- ✓ Issuing payments according to the specified progress payment schedule
- ✓ Paying for all required permits, assessments, and charges required by public agencies and utilities
- ✓ Furnishing all surveys and recording plats and a legal description of the property
- ✓ Providing access to the construction site in a timely manner

Each list of obligations must be customized according to the agreement reached and the individual job being performed. Most contracts require agreement by both parties if obligations are assigned to another party.

Supplemental Conditions

The supplemental conditions modify the general conditions of the contract and are often prepared in a separate document. Supplemental conditions are tailored specifically to each project. They may outline items such as specific insurance requirements, project procedures, and local law requirements.

Be very specific when outlining the obligations of both parties.

Breach of Contract

A breach of contract occurs when one of the parties involved fails to perform in accordance with any of the terms and conditions of the contract.

A breach may occur when a party:

- ✓ Refuses to perform the contract
- ✓ Performs an act prohibited by the contract
- ✓ Prevents the other party from performing its obligations



There are two types of breaches: **material** and **immaterial**.

A **material breach** is a serious violation of the contract. For example, if a contractor refuses to perform or complete a job or if an owner refuses to pay for completed or partial jobs, this is considered a

breach of contract. This type of breach may void the contract and will most likely end up in litigation.

The injured party can seek monetary damages for the loss suffered as a result of the breach. Sometimes the damages are written into the contract. These are called **liquidated or stated damages**.

Breach of contract can occur if contracts are not completed within the time frame specified in the contract. If a time is not specified in the contract, the project must be completed in a "reasonable time." If the project has an unexcused delay, the owner may be entitled to liquidated damages for the "loss of use." Some contracts specify a per-day rate for liquidated damages. For example, if a contract specifies a \$400 per day assessment and the contractor finishes 30 days late, \$12,000 in liquidated damages is assessed to the contractor. An owner who sues for liquidated damages cannot sue for actual damages.

If you sue for breach of contract, you must do so within the statute of limitations. Statutes of limitations are laws that set a maximum period of time within which a lawsuit or claim may be filed. The deadlines vary depending on the circumstances of the case and the type of claim. If a claim is not filed before the statutory deadline, you may lose the right to file a claim.

An **immaterial or partial breach** is a less serious violation and usually does not result in termination of the contract. The injured party may only sue for the value of the damages.

Boilerplate Provisions

Standard Language: The term "boilerplate" refers to standard language or clauses used in a legal contract. Sometimes they are referred to as "miscellaneous" clauses. They generally appear at the end of the contract and their purpose is to protect the business in the event of a lawsuit. Attorney's fees, arbitration, and consent to jurisdiction (meaning where the disputes will be settled) are a few examples of boilerplate provisions. When dealing with contracts, make sure to draft and read the boilerplate provisions carefully. These provisions affect your legal rights just as much as the other parts of the contract.

Provisions to Limit Risk

Allocating Risk: As mentioned at the beginning of the chapter, one of the purposes of a contract is to limit the liabilities of the parties involved. Your contract

should address the allocation of risk among parties. Examples of risk allocation provisions are listed below:

- ✓ **Force majeure** addresses “acts of God” and other external events such as war or labor strikes. This provision is written to either absolve the owner or contractor of costs associated with these occurrences.
- ✓ **Indemnification** absolves the indemnified party from any payment for losses and damages incurred by a third party. Simply put, it is a way to shift payment or liability for any loss or damage that has occurred. Indemnification clauses must be examined carefully to ensure the proper liability is distributed between the contractor and owner.
- ✓ **Differing site conditions** provision allocates the responsibility for extra costs due to unexpected site conditions. As discussed in Chapter 6, the site conditions must be investigated and taken into consideration when putting together the bid. The owner is responsible for disclosing all site information during the bid process. If errors or omissions occur, the owner may be responsible for incurring the extra construction cost.
- ✓ **Warranties or guaranties** define the contractor’s responsibility for the repair of defects to the construction project after the completion of work. Warranties are often set forth for a defined time period.
- ✓ **Delays and extensions of time** provide a contingency in case the completion deadline is not met. Delays at no fault of the contractor, such as changes by the owner or architect and environmental or severe weather delays, are generally not considered breach of contract. These types of delays are considered excusable and are granted time extensions. This contingency needs to be clearly outlined in the contract.
- ✓ **Schedule acceleration** provides assignment of costs incurred to complete a project ahead of schedule. In general, if the owner requires the contractor to accelerate the schedule, the owner is responsible for all associated costs. If the owner requests the schedule be accelerated due to project delays caused by the contractor, the contractor is generally liable for additional costs incurred.
- ✓ **Artistic changes clause** addresses changes made by the architect or design professional during the course of the project for artistic or creative

purposes. The drawings and specifications outline the technical aspects of the project, but may not show the artistic objectives of the project. Including an artistic changes clause will put a limit on the number of changes that can occur as a result of artistic decisions.

Standard legal language must be used when specifying risk assignments to make the contract enforceable. Since legal language is often difficult to understand, it is recommended that you consult with legal counsel when drafting and/or interpreting these provisions.

What Are Recitals?

Background Information: Recitals are language at the beginning of the contract that provide background to the contract, such as the parties entering into the contract, the contract contents, and reasons for the parties’ entering into the contract. Recitals cannot always be enforced by law, so it is important to provide specific terms throughout the contract.

Types of Construction Contracts

The differences in the types of contracts are primarily:

- ✓ Who takes the risk that the work will be performed for the estimated cost
- ✓ Who pays for cost overruns
- ✓ Who keeps the cost savings if the project performed is less than the estimate

Contracts between the owner and primary contractor may differ from contracts between the primary contractor and subcontractors.

Lump-Sum Contract

In a lump-sum contract, the contractor agrees to complete the project for a predetermined, specified price. The contractor essentially assumes all of the risk under this contract agreement because the contractor is responsible for additional costs associated with unforeseen circumstances. For example, if extra cost is incurred due to inclement weather, the contractor must absorb these costs. Conversely, the contractor gets to keep any cost savings achieved.

If you use this type of contract, you may be required to formally submit a specific schedule and your quality assurance program so your customer knows you are completing the project to the highest standards. You

should avoid this type of contract unless plans and specifications are detailed enough that a final cost can be determined in advance.

Unit-Price Contract

A unit-price contract may be used for jobs where the extent of work cannot be fully determined, or the actual quantities of required items cannot be accurately calculated in advance. A price per unit is calculated for each item and the contractor is paid according to the actual quantities used.

Cost-Plus Contract

Using the cost-plus contract method, the contractor is reimbursed for the actual cost of labor and materials and is paid a markup fee for overhead and profit. The cost-plus contract can be calculated different ways. The owner may pay the actual costs, plus a percentage markup or a fixed fee markup.

Contracting Methods

Single Prime

The single prime method is the traditional form of contracting. The project owner typically hires an architectural firm to design the project. The contractor then performs the work according to the specifications of the project and is responsible for the costs of all materials and labor to obtain project completion.

Design/Build

Using the design/build method of construction, the owner contracts with one company to complete the process from start to finish. The company awarded the design/build contract puts together a team of construction professionals, which may include designers, architects, engineers, and contractors that take a project from design through completed construction. The team works closely to satisfy the owner's needs within a predetermined budget.

Construction Management

Under the construction management method, the project owner contracts with a professional construction manager to coordinate and manage the project. The construction manager generally receives a fee to manage, coordinate, and supervise the construction process from the conceptual development stage through final construction. Work must be performed in a timely manner and on an economical basis.

Turnkey

Turnkey construction is similar to the design/build construction model. In addition to managing the construction and design team, the contractor also obtains financing and land. Under the turnkey model, the construction firm is obligated to complete a project according to pre-specified criteria but with expanded responsibilities and liability. A price is generally fixed at the time the contract is signed.

Fast-Track Construction

Under fast-track construction management, the construction process begins before completion of the contract documents. Fast-track construction involves a phased approach to the project. A contract may be drawn up for each phase. Generally, the cost is not fixed until after construction documents are complete and some construction commitments have already been made.

Multiple Prime Contracts

Large construction projects may involve multiple prime contracts. The owner may contract with two or more prime contractors to complete the same project. This contracting method may integrate elements of the construction management and fast-track construction models. The owner takes on a more active role in managing the different prime contractors. Contractor and owner obligations must be clearly defined in the contract.

Partnering

Partnering starts with setting common objectives and goals for a construction project. All parties involved, such as the owner, design professionals, engineers, and contractors, work together to achieve these objectives and goals. Several meetings are held throughout the bid and construction process to evaluate the decisions made by all parties and adjustments occur when necessary. Partnering increases communication and trust, consequently reducing potential litigation and claims.

Sources of Contracts

Standard forms for contracts are readily available through many sources. There are numerous books available that provide sample contracts and forms. Associations such as the American Institute of



Architects (AIA) or the Associated General Contractors (AGC) also have standard forms for contracts.

In situations where the form of the contract is not written by you, it is important to:

- ✓ Read the contract very carefully
- ✓ Highlight anything that is vaguely worded for further clarification
- ✓ Make necessary additions
- ✓ Review changes with the other party
- ✓ Make sure any requested changes have been added prior to signing
- ✓ Review the contract again, prior to signing

Always make sure you keep a signed copy of every contract you sign, in case you need to refer to it in the future.

Making Changes to the Contract

A **change order** is a written agreement between the owner and contractor to change the contract. Change orders add to, delete from, or otherwise alter the work set forth in the construction documents. Change orders are standard in the construction industry as a legal means for making changes to the contract.

Common reasons for generating a change order include:

- ✓ Change in scope (for example, owner requests a design change or owner exceeds allowance amount)
- ✓ Unforeseen conditions when site conditions differ from the expected
- ✓ Errors or omissions in construction plans or specifications

The AIA and AGC have standardized forms that you can use to execute change orders. Change orders are legally binding and it is important that all of the provisions are clear to both parties. Change orders should include:

- ✓ Date of change order
- ✓ Description of the change in work
- ✓ Reason for change
- ✓ Change in contract price

- ✓ Change, if any, in contracted time
- ✓ Signatures from both parties

Chapter 9 also discusses how to handle change orders from a customer relations perspective.

Changes prior to the contract award are called addenda. Changes made after the contract is signed and executed are called **modifications**.

Resolving Claims

The claims resolution process provides a way for the owner and contractor to resolve disputes about additional amounts owed as a result of contract changes. As discussed in the previous section, the purpose of written change orders is to avoid disputes. If a change is made to the contract without a change order, claims may arise.

Claims Procedure: The contract may stipulate specific procedures for handling claims. Many times, the contract defers to the architect to initially resolve claims. If claims cannot be resolved by the architect, the contractor and owner may proceed to mediation. If mediation fails, the next step is arbitration. The contract should specify the time allowed to request arbitration. A typical deadline for an arbitration request is 30 days from the time the architect makes a decision on the claim.

Project Schedule: During the claims resolution process, the project cannot be delayed. All schedules and deadlines must be followed. The only exception is disputes involving safety. Work must cease on disputed activities until all safety issues are resolved.

Alternative Dispute Resolution

Alternative dispute resolution (ADR) involves settling legal disputes by avoiding the often costly and time intensive process of a government judicial trial. The most common forms of ADR are: negotiation, mediation, collaborative law, and arbitration.

Negotiation: Negotiation is a dialogue entered into for the purpose of resolving disputes or producing an agreed upon course or courses of action. Negotiation is inexpensive and generally the first step in ADR. Negotiation allows for an unstructured discussion between both parties and generally does not involve anyone other than the affected parties. If an agreement is not reached, more formal methods of dispute resolution are required.

Mediation: In mediation, the parties themselves set forth the conditions of any agreement with dialogue facilitated by an independent, third party mediator. The mediator is not a judge or arbitrator who sets forth the terms of an agreement, rather a mediator is a trained professional in negotiations and the process of mediation. The goal of mediation is to find areas of agreement between the parties involved by using strategies and techniques designed to allow the parties to work towards a mutual and fair agreement. If a settlement is not reached, the dispute may go through mediation again or sent to litigation arbitration. The option to take legal disputes to mediation is desirable from a cost perspective because it is generally less expensive and allows for a quicker resolution than going to trial.

Collaborative Law: Collaborative law is a facilitative process wherein all parties agree at the onset to work to identify a solution that is beneficial to all parties involved. In collaborative law, the parties use their advocates, most often their lawyers, to facilitate a mutually beneficial result through the process of negotiation. There is no neutral mediator or arbitrator involved and the parties are expected to reach a settlement without using further methods of ADR or litigation.

Arbitration: Arbitration uses a third-party arbitrator or arbitrators to act as a judge or judges to render a decision by which all parties are legally bound. Arbitration is held in a format less formal than a trial. The arbitrator(s), unlike a mediator, is not involved in the negotiation discussion towards a settlement. Arbitrators may be attorneys or retired judges who serve individually or as a panel. They are either chosen by the parties involved in the dispute or appointed by the court according to the terms of the contract. Arbitrators with industry-specific experience (such as construction litigation experience) may be appointed to certain types of disputes. The decision or arbitral award made by the arbitrator(s) is legally binding unlike in mediation. Many times, contracts call for disputes to be resolved through arbitration over taking matters to a costly trial. Arbitration may be required by law for certain types of disputes. Nearly all states have adopted the federal Uniform Arbitration Act making arbitral awards binding by both state and federal law.

Making Substitutions

When bidding on a project, many contractors bid from their normal manufacturers and suppliers and not the manufacturer that appears on the plans. When bidding, you need to make sure you can pay for the cost of all items and products as specified. Failure to do so could cost you a lot of money.

Substitution Approval Process: The best way to ensure a specific substitution is by the “prior approval” process.

A “prior approval” occurs during the bid stage only. If a particular product or item is desired other than the specified item, you must submit a request while the project is being bid. If approved, all bidders will be allowed to use that item or product in their bids. That is why the “prior approval” is done in the bidding stage. It keeps the playing field level for all competitors.

Substitutions After the Bid Process: A substitution may be made after the bid has been accepted. Nevertheless, any substitution must meet certain criteria to even be considered. The specifications should describe the conditions for such substitutions. Usually there are only four reasons that a substitution would be entertained:

- ✓ The specific item or product is no longer available
- ✓ A cost savings
- ✓ A time savings
- ✓ Combination of cost and time savings

Discontinued Products: A product no longer available is generally the only event that will not require a change order reducing cost and/or time, unless it was approved under the “prior approval” process. Do not forget to note those reductions in the substitution request. The reason a reduction of cost and/or time is required is due to the fact that it is understood that the bid was based on the specific item or product. To make a change, the result must benefit the owner; otherwise, there is no reason to make the substitution.

Substitution Specifications: If there is a basis for the substitution, the next requirement is that the item or product must be equal to that which was specified. Just as the reference of a 2 x 4 to contractors is not measured as 2” x 4”, its nomenclature is referred to as “nominal.” Many other products are referred to as

“nominal” sizing. HVAC systems are especially that way. Just because one manufacturer references a unit as five-tons, it does not mean that it produces the same capacity as a five-ton unit from another manufacturer under the same conditions.

The specifications must be analyzed carefully before submitting the substitution request. Be sure to cover the cost of the specified item, as a substitution may not be granted, not even in the “prior approval” process.

Contract Documents and Project Manual

The project manual is a central location for bid documents, contract provisions, technical specifications, and addenda. This bound manual is a useful tool easily referenced on the jobsite. It can be reproduced and distributed to contractors, subcontractors, and suppliers. The following is a detailed summary of the documents contained in a typical project manual.

Bid Documents:

- ✓ Invitation to bid
- ✓ Bid instructions
- ✓ Bid forms
- ✓ Supplements
- ✓ Addenda

Contract Provisions:

- ✓ Form of agreement
- ✓ General conditions or obligation of parties
- ✓ Supplemental conditions
- ✓ Change orders
- ✓ Index of drawings

Supplemental Forms:

- ✓ Required bonds
- ✓ Certificate of insurance

Technical Specifications are generally organized by a classification system, such as the CSI MasterFormat.

The **construction drawings** are also part of the contract documents. For larger projects, the drawings are divided by design discipline and trades. Drawings may include but are not limited to:

- ✓ Architectural
- ✓ Structural
- ✓ Plumbing
- ✓ Electrical
- ✓ Mechanical
- ✓ Landscape
- ✓ Civil

The drawings are kept separate but can be indexed in the project manual.

Are Oral Agreements Legally Binding?

Under most circumstances, oral agreements are just as binding as written agreements with a few exceptions. Exceptions include contracts which have a high risk of fraud such as the sale or purchase of land. Oral agreements present a challenge because it is difficult to prove what terms were agreed upon if a dispute arises. Needless to say, it is a risky way to do business and it is best to get everything in writing.

Sometimes parties enter into agreements that are partially oral and partially written. For example, you may have carefully put together a written contract to do work. The customer then verbally gives you a change order. Now you are in a situation where you have an oral agreement for the change. To protect yourself, it is best to follow up with a written change order. In a legal judgment, written agreements always take precedence over oral agreements.

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Oral agreements are not a good way to do business. Get it in writing!
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Legal Interpretation

Clarity of language and meaning is one of the most important aspects of interpreting contracts and avoiding disputes. It is strongly recommended that you use an attorney when drafting contracts to ensure that the contract will stand up in a dispute. There are also necessary provisions that should be included in a contract. A contract lawyer can advise you on this matter.

The use of plain language is important when establishing intent in a contract. If a dispute arises, the contract will be interpreted using the plain meaning

of the words in the contract. If your contract goes to litigation, the judge may not have a background in the construction industry. This is why it is important to clearly state the terms in the contract using plain language.

Technical terminology in contracts between parties who understand their technical meaning may be used. However, many customers may not understand technical jargon so you may want to use caution putting these terms in a contract. Rather, you should express your intentions in layman terms. Disputes may arise when parties do not understand undefined technical language and contract interpretation may not end up in your favor.

If the provision being disputed is vague, the actions of the parties will be examined first. If the parties conducted themselves consistently with what they thought the provision meant at that time, the provision would likely take that meaning. If the contract cannot be clarified based on this method, the interpretation will go against the party who wrote it.

Subcontracting

Subcontractors contract with the general contractor or other subcontractors to complete a portion of a larger project. The same principles that apply to owner/contractor contracts also apply to subcontracts.

Subcontracts should include similar content as owner/contractor contracts, such as:

- ✓ Date
- ✓ Names and contact information of contracting parties
- ✓ Name and location of project
- ✓ Description of the work to be performed
- ✓ Subcontract time or start and completion date
- ✓ Payment terms, including progress payment schedule and final payment
- ✓ Conditions for schedule delays
- ✓ Drawings and specifications
- ✓ Contract sum
- ✓ Any general and supplemental conditions that apply
- ✓ Signatures from both parties

Depending on the stipulations in the owner/contractor agreement, the owner may need to approve subcontractors.

It is also important to get subcontracts in writing to avoid disputes. In providing a written contract, both parties have a clear understanding of the agreement. Oral contracts can lead to ambiguity and one party may interpret the agreement differently than the other.

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Clarity is very important to an enforceable contract.
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Final Inspection...

Required Contract Elements: Required contract elements include offer and acceptance, consideration, competent parties, and legal purpose.

Contract Provisions: Your contract should contain provisions that clearly outline the terms of the contract. A few key provisions you want to include are contract price and payment terms, obligation of the parties, and breach of contract.

Breach of Contract: A breach of contract occurs when one of the parties involved fails to perform in accordance with any of the terms and conditions of the contract.

Boilerplate Provisions: These provisions contain standard language designed to protect you in the event of a lawsuit.

Provisions to Limit Risk: These provisions limit the liability of the contracting parties by addressing allocation of risk.

What Are Recitals? This language appears at the beginning of the contract and is intended to give background information.

Types of Construction Contracts: Different types of contracts address who is responsible for cost savings and overruns for estimated work.

Contracting Methods: Depending on the level of involvement in a construction project, different types of contracting methods are used.

Sources of Contracts: Contracts are available through several different sources, including associations such as the American Institute of Architects (AIA) or the Associated General Contractors (AGC).

Making Changes to the Contract: To change the contract, a change order is written and agreed to by the owner and contractor.

Resolving Claims: The claims resolution process provides a way for the owner and contractor to resolve disputes about additional amounts owed as a result of contract changes.

Alternative Dispute Resolution (ADR): Involves settling legal disputes by avoiding the often costly and time intensive process of a government judicial trial. The most common forms of ADR are: negotiation, mediation, collaborative law, and arbitration.

Making Substitutions: Specifications must be analyzed carefully before submitting the substitution request. Substitutions may be granted if products are discontinued or to provide a cost or time savings.

Contract Documents and Project Manual: The project manual is a central location for bid documents, contract provisions, technical specifications, and addenda.

Are Oral Agreements Legally Binding? Oral agreements can be binding, but it makes good business sense to get a contract in writing.

Legal Interpretation: Clarity of language and meaning in contracts is important to avoid disputes and ensure proper legal interpretation in the event of a lawsuit.

Subcontracting: The same principles that apply to owner/contractor contracts also apply to subcontracts. Similar language is used to ensure that each party is clear on terms and conditions of the contract.