

Construction Contract Checklist and Notes

CONTRACT CLAUSE	ISSUE TO REVIEW	OK?	NOT OK?	IF NOT OK SEE NOTE X
Scope of Work	Very thoroughly written?			1
	Interfaces defined?			2
	Exceptions noted?			3
	Work by others defined?			4
Terms of Payment	Positive cash flow?			5
	Downpayment?			6
	Retention?			7
	Paid if Paid/Paid When Paid?			8
Schedule	Adequate for work to be performed?			9
	Realistic if LDs?			10
	Contingency in schedule?			11
Insurance	Realistic amounts?			12
	Additional insured?			13
	Contractual liability?			14

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<i>Indemnity</i>	Broad form?			15
	Intermediate form?			16
	Limited form?			17
	Financial limits?			18
	Anti-indemnity state?			19
	Time limits?			20
<i>Changes</i>	Time and money?			21
	Prior written agreement?			22
<i>Disputes</i>	Negotiate first?			23
	Mediation?			24
	Arbitration/Litigation?			25

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<i>Assurances of Performance</i>	On demand bond from bank?			26
	True guaranty by surety?			27
<i>Damages</i>	Liquidated damages?			28
	Consequential damages?			29
<i>Warranty</i>	Start time?			30
	Length of warranty?			31
	Exceptions?			32

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Notes:

1. Most claims and disputes arise out of poorly defined scopes of work.
2. Define scope at interfaces between contractors to avoid disputes.
3. Clarify what scope you are not going to perform.
4. Clarify what scope you expect to be performed by others.
5. Do a cash flow to make sure the agreed upon terms of payment create a positive cash flow for the project.
6. Always try to get a downpayment of some form of very early payment.
7. Do not agree to retention. Provide a warranty bond instead. Keep the cash.
8. These terms are unfair. Eliminate or put a maximum time period on receipt of payment.
9. Enough time to do the job? Really?
10. If LDs, is the schedule achievable and realistic? If not change.
11. Have some contingency in your schedule. Unforeseen delays always occur.
12. Is the amount of the insurance required realistic for the value of the job? If not, lower.
13. Providing the client additional insured status gives him full access to your insurance policy(ies) at no cost.
14. Contractual liability covers your obligations under the indemnity clause in the contract. Can you live with the indemnity as written? Is the indemnity enforceable?
15. Broad form indemnities make you responsible for claims arising out of any degree of your client's negligence.
16. Intermediate form indemnities make you responsible for claims arising out of any degree of your client's negligence, except his sole negligence.
17. Limited form indemnities make both you and your client responsible only to the extent of your negligence for claims.
18. Broad and intermediate form indemnities must have maximum financial limits.
19. Some states outlaw broad and/or intermediate form indemnities in construction contracts. Check first; don't assume.
20. Indemnities should only be in effect for claims actually occurring while you are physically working on the construction site, no other time frames allowed.
21. All changes should have time and money considerations. Time only is unfair.
22. All changes in writing. No exceptions.
23. The best way to resolve disputes is through negotiation.

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24. Mediation is the next best way to resolve disputes.
25. Arbitration and litigation are poor, and costly, dispute resolution processes.
26. An on-demand bond is not an assurance of performance, or a “performance bond”. These types of “bonds” can be easily cashed by the client.
27. A true assurance of performance, a “performance bond”, is a guaranty provided by a surety company. These types of “bonds” cannot be easily cashed by the client.
28. Are liquidated damages necessary? Are they a penalty? Limit, limit, limit.
29. There should always be a mutual exclusion of consequential damages, and it must be in writing in the contract.
30. All warranties must have a definitive and well defined start time.
31. All warranties must have a stated duration, i.e. 12 months.
32. Exceptions to warranties must be stated. i.e. corrosion, wear and tear, improper use, etc.