

# The "Standard" Form Contract: Exploring the Decennial 2017 Changes to the AIA Contract Forms

Daniel Lund III

Carys A. Arvidson

February 1, 2018

CPM Conference – New Orleans

What happens when the  
construction contract is signed?



# Contract Interpretation

Interpretation of a contract is the determination of the  
**common intent of the parties**

# Contract Interpretation

## Determining Intent

No further interpretation when intent is clear

When the words of a contract are **clear and explicit** and lead to no absurd consequences, **no further interpretation may be made** in search of the parties' intent.

# Contract Interpretation

## Determining Intent

The words of a contract must be given their generally prevailing meaning

**Words of art** and **technical terms** must be given their **technical meaning** when the contract involves a technical matter.

# Contract Interpretation

## Determining Intent

In case of doubt that cannot be otherwise resolved, a provision in a contract must be **interpreted against the party who furnished its text.**

# Historical perspective on the AIA documents

- Have been the most used standard form documents since 1888, now composed of nearly 200 agreements and forms
- Updated roughly every 10 years to adapt to actual practices in the construction industry

# Historical perspective on the AIA documents

- In an effort to arrive at fair, evenhanded documents, AIA conducts research in the market, consulting with various construction industry participants, including owners, contractors, architects, insurance companies, sureties, and construction-industry attorneys

Some say, regarding the 2017 changes:

- Changes are long overdue, as the workplace is continuously and quickly changing, and the 10 years between revisions seems too long to meet the changes.
- Note that Consensus Docs which originated in 2007 are updated every 5 years, and even more frequently based upon developments in the industry.

## Principal document forms are as follows:

### A-Series: Owner/Contractor Agreements

- i. Includes subcontractor agreements

### B-Series: Owner/Architect Agreements

### C-Series: Other Agreements

- i. Includes teaming agreements, joint venture agreements, consultant agreements, some construction management agreements, program manager agreements

### D-Series: Miscellaneous Documents

- i. Very peripheral documents such as methods of calculating areas and volumes of buildings, project checklist, and guide for sustainable projects

## E-Series: Exhibits

- i. Principally building information modeling-related exhibits and sustainable projects exhibit

## G-Series: Contract Administration and Project Management Forms

- i. Includes change order and construction change directive forms, application for payment, schedule of values, substantial completion certificate

Revised forms from the most used documents (of approximately 180 different documents; there are other revisions to other documents) are:

A401 subcontract

A101 general contract standard form agreement

A201 general conditions

C401 architect-consulting agreement

A104 (formerly 107-2007) owner-contractor agreement for limited scope when a stipulated sum or cost plus

B101 owner-architect agreement

Revised forms from the most used documents (of approximately 180 different documents; there are other revisions to other documents) are:

B203 owner-architect agreement for architect to determine potentiality of one or more sites

A105 owner-contractor agreement for small projects

A102 owner-contractor agreement for large cost-plus (that is, plus a fee) projects with a GMP

**Total of 37 revised documents being released.**

# General Conditions

## AIA Forms

(for example, AIA A201 General Conditions)

- Boilerplate
- Favor Architect, Owner, and General Contractor
- Principal change through the years: no more architect supervision, but notice to the architect

# General Conditions

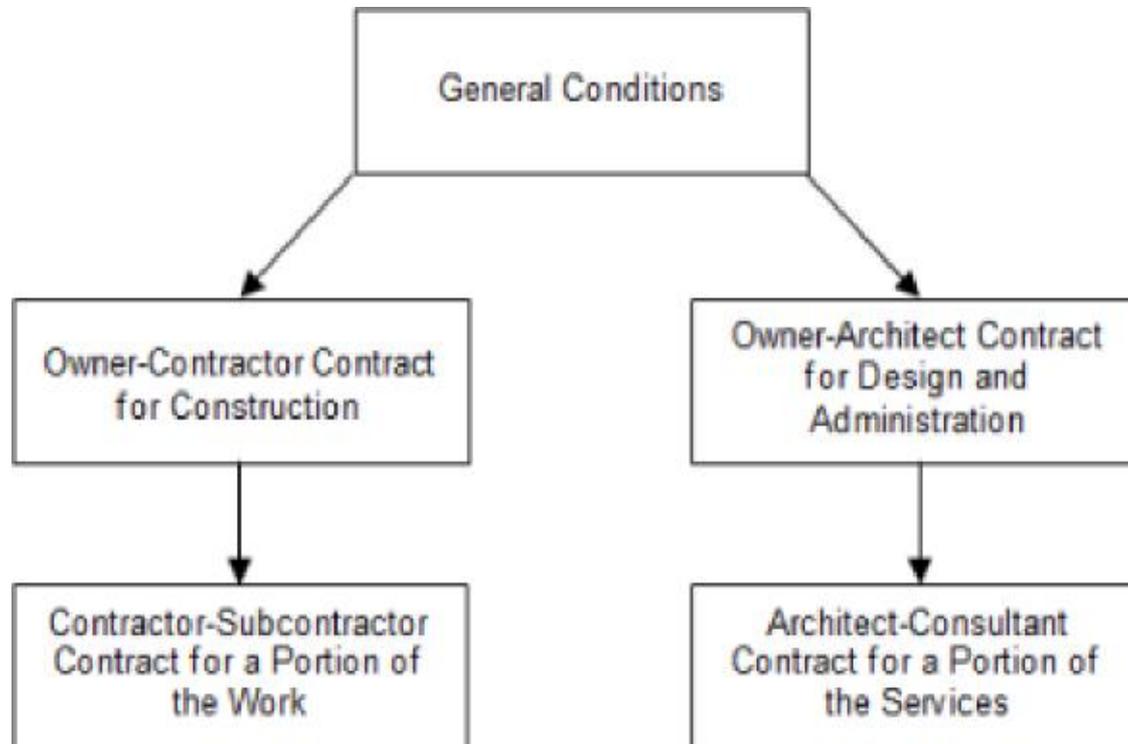
## Secrets to Success with AIA Forms

- Read the contract **EVERY TIME**.
- Check the version.
- Know what is attached.
- Word processing.
- Use an attorney.

# From the 2017 AIA A201 Instructions

- AIA Document A201™–2017, General Conditions of the Contract for Construction, is considered **the keystone document** of the Conventional (A201) family of documents because it provides the terms and conditions under which the Owner, Contractor, and Architect will work together during the building construction process.

# From the 2017 AIA A201 Instructions



# From the 2017 AIA A201 Instructions

USING A201–2017

**Modifications.** Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws.

**Users are encouraged to consult an attorney before completing or modifying a document.**

# From the 2017 AIA A201 Instructions

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work and violate the AIA's copyright.

# Significant changes over the years in the A201 form

# Waiver of Consequential/Liquidated Damages

- AIA A201
  - 1997 change on consequential damages.
  - Liquidated damages an afterthought.
- Consensus Docs
  - The more prominent consequential/liquidated damages.
  - Liquidated damages for substantial completion and final completion delays.
- Liquidated damages as a double-edged sword.
- ALL OF THESE ARE OPTIONAL CLAUSES!

# Arbitration and Mediation

## AIA Forms

- A201-1997 Mandatory Arbitration and Mediation
- A201-2007 Changed:
  - “Initial Decision Maker” (architect is default IDM) is initial reference for disputes.
  - Thereafter, mediation is still necessary.
  - Arbitration no longer the final binding dispute resolution (courts are the default mechanism if arbitration is not selected).
    - Arbitration joinder provisions added.

Other Significant Changes over the years:

(from A201-1997)

Great Expectations:

No longer results “intended” by  
Contract Documents, by “indicated.”

# Other Significant Changes over the years:

(from A201-1997)

- Contractor review of documents
  - No longer obliged to find errors, omissions or inconsistencies in Plans and Specifications.
    - Simply must inform if found.

## Focus of the 2017 AIA revisions:

- Principally to address provisions where language lacked imprecision, leading to problems on projects and the greater probability of disputes during the work; and
- To provide better communication and correspondence, generally, among the various interrelated documents

# Other key construction clauses/legal concepts:

# Spearin Doctrine

If work is constructed in accordance with plans and specifications provided to the contractor, the contractor will not be liable for any destruction or deficiency.

# Payment Provisions

Pay if Paid v. Pay When Paid Clauses

# Modifications/Change Orders



# Modifications/Change Orders

- A contract may be modified only by mutual consent, which:
  - May be presumed by silence
  - May be oral
- Is an agreement to modify original contract.
- Special rules for public contracts.
- Exceptions to writing requirement:
  - Alteration cannot be supposed to have been made without Owner's knowledge
  - Alteration is not foreseen but is necessary for completion.

# Quantum Meruit

Principal of law that no one should be enriched at the expense of another.

- Contractor may recover value of services despite invalid, unenforceable contract.
- Quantum meruit award may include:
  - Labor
  - Materials
  - Overhead
  - Profit

# General Conditions

## Key Contract Clauses

- Incorporation by Reference
  - All construction documents should be referenced by date, page, title, edition, and any other type of identifying mark possible.

# Indemnity

- “. . . damages, losses, expenses, attorneys’ fees arising out of or resulting from performance of the work.”
- Typically only to the extent of one’s negligence, acts/omissions.
  - Includes lien claims.
  - Contractor defense: nonpayment by owner.
  - If negligence of another: must be express; **now prohibited** in construction contracts in many states.

# No Damage for Delay Clauses

No damages for delay clauses can be very costly. Below is a type of no damages for delay clause:

- Notwithstanding anything to the contrary in the Contract Documents, an **extension in the Contract Time shall be the sole and exclusive remedy for the Contractor for any:** (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity; or (4) other similar claims (collectively referred to in this paragraph as Delays) whether or not such Delays are foreseeable.

# Notices

- Oral notice?
  - Possibly equity, but don't count on it.
- 21-day claim notice in AIA (“... *within 21 days after the occurrence of the event giving rise to such Claim or within 21 days after claimant first recognizes the condition giving rise to the Claim...*”)

Read the contract every time –  
it's an open book test!

# Subcontracts: Key Clauses

- Mandatory arbitration consolidation provisions to avoid inconsistent results
  - Consolidation must also be in the general contract or else there is no merit to the subcontract provision
- Pass-through provisions, for example, liquidated damages

Examining some of the key 2017  
changes in the  
A101, A102, and A201  
Owner/Contractor documents

A101

Article 5 payment provisions “simplified.”

Detailed retainage provisions (including the possibility of certain items for which retainage will not be withheld, such as general conditions or insurance).

Appears to deemphasize completed percentages and schedule of values, at 5.1.6.1 (although this is not the case in the A102 document).

Contractors are specifically instructed to omit or deduct from payment applications any amounts that the contractor does not intend to pay to its subcontractors, 5.1.6.2.3. **This is a big deal!**

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

7.1.1. Standard assumption that contractor will be paid a termination fee in the event of termination for convenience

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:  
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

A102:

Same changes as A101, plus:

7.1.2. Owner approval of any costs comprising the Cost of the Work must now be in writing prior to contractor incurring those costs.

~~§ 7.1.2 Where~~ Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement. such approval in writing prior to incurring the cost.

Article 11 accounting records now includes job cost reports and subcontractor invoices

## Article 11 Accounting Records

The Contractor shall keep full and detailed records and accounts related to the ~~cost~~ Cost of the ~~Work~~ Work, and exercise such ~~controls~~ controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, ~~memoranda~~ memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

12.1.5.3. Contractor must submit supporting documentation when transferring contingency to other cost items.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

A201

## 1.1.8. IDM cannot show partiality.

### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section ~~15.2~~ and certify termination of the Agreement under Section ~~14.2.2.~~ 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

1.6.2. Notwithstanding multiple provisions assuming increased usage of electronic data (for example, BIMs and the electronic data exhibit), claims for additional money and time still must be made in writing via certified mail or courier with proof of delivery.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

*Note: Section 1.6 formerly appeared at Section 13.3.*

1.8. Provides that contractor reliance on BIM modeling will be at contractor's sole risk and without liability of any other party" unless the parties use E203 and G202 BIM modeling documents. This is a risk to contractors if they are not dotting I's and crossing T's.

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

2.2. Additional evidence of financial wherewithal of owner allowed. Increased stop work protection for contractor if later circumstances develop showing owner cannot fulfill payment obligations.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

3.7.4. Concealed or unknown site conditions. Largely unchanged, but 21-day notice requirement has been reduced to 14 days after the 1st observance of the conditions.

**§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~21~~14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect

3.10. Schedules. Contractor is required to specify in greater detail the information to be included in schedule submittals, such as schedule milestone dates and apportionment of the work by construction activity. The old requirement only provided for a construction schedule that did not exceed the time limits contained within the contract documents under 3.10.1.

**§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall ~~prepare and~~ submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. ~~The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.~~

3.17. Concerning infringement of copyrights and patent rights with respect to particular designs, processes, or products. Contractor threshold for liability is no longer “reason to believe” but now “discovered by, or made known to.”

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for ~~such~~ defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if ~~the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent~~ is discovered by, or made known to, the Contractor, the Contractor shall be responsible for ~~such~~ the loss unless ~~such~~ the information is promptly furnished to the Architect.

4.2.4. Change in protocol for communications where architect is no longer required to be the conduit of all communications, although architect is supposed to be included in all communications.

---

~~§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION~~

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the~~

§ 4.2.4 Communications

~~The Owner and Contractor shall endeavor to communicate with each other through~~ include the Architect about  
~~matters arising out in all communications that relate to or affect the Architect's services or professional~~  
responsibilities. The Owner shall promptly notify the Architect of or the substance of any direct communications  
between the Owner and the Contractor otherwise relating to the Contract Project. Communications by and with the  
Architect's consultants shall be through the Architect. Communications by and with Subcontractors and ~~material~~  
suppliers shall be through the Contractor. Communications by and with ~~separate contractors~~ Separate Contractors  
shall be through the Owner. The Contract Documents may specify other communication protocols.

5.3. Subcontracts must now be in writing, as opposed to the former “where legally required for validity.”

**§ 5.3 Subcontractual Relations**

By appropriate written agreement, ~~written where legally required for validity~~, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, ~~which~~ that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the

6.2.2. Concerning the work or operations by owner or separate contractors. Adds a sentence that the contractor is not responsible for discrepancies or defects by owner or separate contractors “that are not apparent.”

**§ 6.2.2** If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly ~~report to~~ notify the Architect of apparent discrepancies or defects in ~~such other~~ the construction or operations by the Owner or Separate Contractor that would render it unsuitable for ~~such~~ proper execution and results ~~of the Contractor’s Work~~. Failure of the Contractor ~~to~~ notify the Architect of apparent discrepancies or defects prior to ~~report~~ proceeding with the Work shall constitute an acknowledgment that the Owner’s or Separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work; ~~except as to defects not then reasonably discoverable~~. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

7.4. Minor changes in the work, if affecting the contract amount or time, must be the subject of a notification from contractor to architect and contractor shall not proceed with the minor changes except at his own risk.

#### **§ 7.4 Minor Changes in the Work**

~~The Architect has authority to~~ may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involving involve an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will be effected by written order signed by affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall ~~be binding on the Owner and Contractor.~~ not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

9.2. Now obligates contractor to submit changes to the schedule of values to the architect, and to support those changes with “such data to substantiate its accuracy of the Architect may require.”

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect, before the first Application for Payment, ~~a schedule of values allocating the entire Contract Sum to the various portions of the Work and~~. The schedule of values shall be prepared in such the form, and supported by such the data to substantiate its accuracy as, required by the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

9.3.1 Progress payment lien waivers: Contractor can now be required to submit releases and/or lien waivers with pay applications for progress payments;

and, per 9.6.8 (new section) indemnify owner from damages caused by liens or claims filed by a sub, where the owner has complied with its payment obligations.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

Article 11. Insurance: has deleted provisions relating to specific types of insurance required instead, AIA has provided a separate, six-page contract form entitled, “Exhibit A,” to the A101 and A102 forms, and provides checkboxes for various types of insurance and limits.

14.1.3. Follows 14.1.1 and 14.1.2 where contractor may terminate for work stoppage-related reasons and for cause. Adds the concept that the recoverable OH & P is to include “Work not executed.” Eliminates recovery of “damages,” which makes sense because the damages are subsumed in the recoverable lost profit.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ ~~written~~ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including as well as reasonable overhead and profit, on Work not executed, and costs incurred by reason of such termination, ~~and damages~~.

15.1.1. Owner no longer has to initiate a claim in order to impose LD's.

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

## 15.2.6.1. After IDM decision, time within which to pursue mediation is shortened.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation ~~within 60 days of the initial decision.~~ If such a demand is made and the party receiving the demand fails to file for mediation within ~~the time required~~ 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

15.3.3. If after IDM decision matter has been mediated unsuccessfully, either party may demand that the other party file a claim in arbitration or litigation within 60 days of that demand, or else the IDM decision becomes final.

§ 15.3.3§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

Notable A201 clauses that  
didn't change:

3.18.1 on indemnification. The “only to the extent” language has been the source of courts questioning the intended meaning.

**§ 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.

*Fin.  
Mercí!*

Daniel Lund III  
Daniel.Lund@Phelps.com

Carys A. Arvidson  
Carys.Arvidson@Phelps.com