
Brian Perlberg, Esq.
ConsensusDocs, Executive Director & Sr. Counsel.
bperlberg@ConsensusDocs.org

ConsensusDocs
Keeping You Ahead of the Curve
20 ConsensusDocs = 20 in 07
100+ Contracts

- 200 Series – General Contracting
- 300 Series – Collaborative
- 400 Series – Design-Build
- 500 Series – Construction Management
- 700 Series – Subcontracting
- 800 Series – Program Management
**Project Dashboard:**

- Microsoft Word
- Version control
- Document Comparison
- Make Favorites
- Finalize Documents

## Supporting Documents

<table>
<thead>
<tr>
<th>Add document</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation Date</td>
</tr>
<tr>
<td>No supporting documents</td>
</tr>
</tbody>
</table>
“Refinements addressing changes in case law, the insurance market, technological advances, and terminology refinements are being published”
Payment

- Constructor is now paid in 15 Days instead of 20 Days (§9.2.1)

- Retention for Final completion is now 150% instead of 200%

- No further retention at 50% completion of the Work. This helps payment flow which is the lifeblood of Builders'.
Property Insurance, Builder’s Risk

- Builder now buys Builder’s Risk policy instead of Owner
  
  - 50% cheaper
  - Constructor must factor this into its pricing
  - Procuring party is responsible for deductible and co-insurance
  - Owner can purchase and give notice

- Language carefully crafted to cover renovations and existing structures

- Risk of Loss is now upon the Constructor in 750 & 751 Subcontracts.
Insurance

- Owner’s Liability Insurance and Business Income Insurance were both eliminated

- Pollution Liability Insurance (PLI) was added as a check-the-box option for projects

- Owner must provide owner info if it holds PLI

- ConsensusDocs has detailed insurance requirements, including for A/E (ConsensusDocs 240 Owner/Design Professional Agreement).
“both primary and excess of Constructor and its Subcontractors shall be primary and non-contributory to any insurance available to AI”

- Additional Insurance at §10.4.1.
- Horizontal = excess policy isn’t triggered until all primary
- Vertical = downstream parties pay b/f upstream.
Changes

• Interim Directive Changes now = “Interim Changes”

• Include written instructions that don’t necessarily impact time or money

• Payment of 50% of disputed amount = now based on invoices (not Constructor’s estimate)
  • CD innovative provision on changes helping Constructor cash flow remains

• Changes are to be memorialized in 7 days.
Schedule

Basic requirements of CPM schedule now required contractually §8.3.4.
Indemnification

- Now covers INTENTIONALLY wrongful acts

- Indemnification doesn’t necessarily match insurance coverage (no insurance self sabotage).
Mediation

- JAMS listed as a provider
- Defaults to AAA
- Party-selected rules + provider is now listed
- DRB language clarified not to coordinate with ConsensusDocs 200.5 DRB addendum.
- ConsensusDocs has a good track record of keeping you out of court.
Arbitration

• Bolded + Caps language clarifies Parties’ intent to arbitrate
  • Based on NJ case law
• AAA Fast track rules for $250,000 in total claims to save time and money
  • Single day of hearing and complete in 45 days
  • AAA rules sets the threshold at $75,000
• AAA rules and admin is default.
Termination for Cause

- First notice is 7 days, second notice is now 3 days
- Improper termination for cause no longer defaults to a termination for convenience
- Use of terminated Constructor’s equipment required written permission.
Termination for Convenience

- Includes reasonable attorney’s fees for costs related to termination.
- Still a fill in the blank premium for Owner agreement
- However, remedy for non negligent Sub to get lost profits for the Subcontract (CD 750, §10.4).
No automatic increase in penal sum after 10% increase in contract price. §10.6.
Cost of the Work, Corrective Work

- Added, “Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work before expiration of the one-year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from Constructor’s negligence.” CD 235, 8.12

Avoiding Fiduciary Duty
ConsensusDocs 240/245

- Possible contractual language that some argued created a fiduciary duty has been eliminated.
  - 2011 “covenants” eliminated
  - 2016 “further the interests” eliminated.
ConsensusDocs recognizes that delegated design will be performed by more than one Sub and the General Contractor. The “in responsible architect” needs to do some coordination of design.

PL insurance contains prior acts coverage with explicit self- insured retention maximum limits.
Clarifications and Consistency

• Hundreds of editorial changes
• Get a sample by registering at www.ConsensusDocs.org
• Free Redlines available here https://www.consensusdocs.org/2016UpdatedContracts

Brian Perlberg, Esq.
ConsensusDocs, Executive Director & Sr. Counsel.
bperlberg@ConsensusDocs.org