International Municipal Lawyers Association



Construction Contract Drafting Initiative

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Rights, Responsibilities and Role of Architect

IMLA

A201™ Articles affected:

- 1.1.2 The Contract
- 2.4 Owner's Right to Carry Out the Work
- 3.1.3 Contractor (General)
- 4.2.1 Administration of the Contract
- 4.2.4 Communications Facilitating Contract Administration
- 9.4.2 Execution of Certificate for Payment
- 14.2 Termination by the Owner for Cause
- 15.1.3 Continuing Contract Performance (during disputes)





Ownership and Use of Design and Design Documents

IMLA

A201™ Articles affected:

- 1.1.7 Instruments of Service
- 1.5, 1.5.2 Ownership and Use of Drawings, Specifications and Other





Order of Precedence among documents

IMLA

A201™ Articles affected:

- 1.4 Interpretation





Contractor's duty to investigate conditions and review the contract documents

IMLA

A201™ Articles affected:

– 3.2 Review of Contract Documents and Field Conditions by Contractor





Employment issues: employment eligibility

IMLA

A201™ Articles affected:

- 3.4.3 Labor and Materials (employment eligibility)
- 3.9.1 Superintendent (contact information; language fluency)





Warranty

IMLA

A201™ Articles affected:

- 3.5 Warranty







Taxes

A201™ Articles affected:

– 3.6 Taxes – language for tax-exempt projects





Construction Schedules

IMLA

A201™ Articles affected:

– 3.10 Contractor's Construction Schedules





Considerations for Articles 3.1 and 8

- Key additions and modifications
- Must be addressed on a project by project basis
- No two projects are the same
- One spec does not fit all





Contractor's use of site

IMLA

A201™ Articles affected:

- 3.13 Use of site (responsibility for temporary services)
- 3.15 Cleaning up, working hours, noise







Changes

- A201™ Articles affected:
  - 7.2.2 Change Proposals





Delays and Extensions of time

IMLA

A201™ Articles affected:

- 8.2.3 – 8.2.9 Progress and Completion
- 8.3 Delays to Contractor and Extensions of Time (includes delay damages, no damages for delay)







Schedule Must Have's

- All files in native electronic format
- Tie approval of baseline schedule to payment
- Update interval – each month is typical
- A narrative with each schedule submittal





Delays – 8.3

- Must Define Critical Path
- 8.3.1 fails to address concurrent delays – THEY MUST BE DEFINED
- Who owns the float?
- Unexcused delays and liquidated damages





Payment

A201™ Articles affected:

- 9.3 Applications for Payment
- 9.4 Certificates for Payment
- 9.6.7 Funds held for benefit of subcontractors
- 9.7 Failure of Payment







Substantial Completion

A201™ Articles affected:

- 9.8 Development of Punch List, actions that must be taken (discuss two alternative approaches offered)







Final Completion and Payment

IMLA

A201™ Articles affected:

- 9.10 Documentation to be produced, actions that must be taken







Protection of Persons and Property

A201™ Articles affected:

- 10.2 Safety of Persons and Property
- 10.3 Hazardous Materials (note different options presented)
- 10.4 Emergencies





Insurance and Bonds

IMLA

A201™ Articles affected:

11.1 Contractor's Liability Insurance

- Selection of right coverages and limits
- Requirement for Certificate and some, endorsements in advance







Insurance and Bonds

IMLA

A201™ Articles affected:

11.3 Property Insurance

- Issues with Builder's Risk Coverage
- Settlement of Claims/Fiduciary Responsibility
- Waivers of Subrogation







Insurance and Bonds

IMLA

A201™ Articles affected:

11.4 Performance and Payment Bonds

- Importance of selecting forms

- Approval of surety company, review power of attorney







Miscellaneous

A201™ Articles affected:

- 13.1 Governing Law
- 13.2 Successors and Assigns
- 13.3 Written notice
- 13.5 Tests and inspections
- 13.6 Interest
- 13.7 Time Limits on Claims
- 13.8 Document Retention and Audit Provisions





Termination or Suspension of Contract

IMLA

A201™ Articles affected:

- 14.1 Termination by the Contractor
- 14.2 Termination by the Owner for Cause
- 14.4 Termination by the Owner for Convenience







Claims and Disputes

- A201™ Articles affected:
  - 15.1.2 Notice of Claims
  - 15.1.5.2 Weather-related claims
  - 15.1.6 Claims for Consequential Damages
  - 15.3 Mediation
  - 15.4 Arbitration





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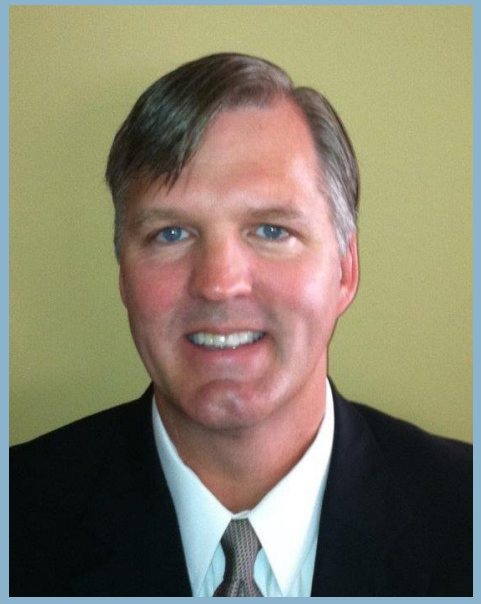

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