

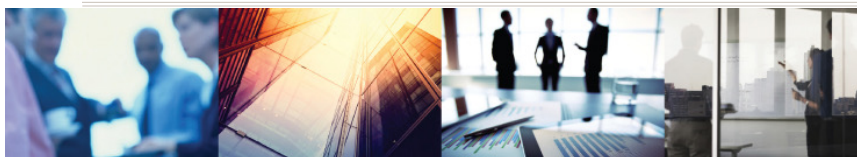
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CONSTRUCTION CONTRACTS: KEY DIFFERENCES

AGC of Minnesota
January 11, 2022

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Overview of Industry Form Contracts

- American Institute of Architects ("AIA")
- ConsensusDocs
- Engineers Joint Contract Documents Committee ("EJCDC")
- Design-Build Institute of America ("DBIA")
- AGC of Minnesota

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Key Differences – Clauses to Know

- Waiver of Consequential Damages
- Differing Site Conditions
- Indemnification
- Liquidated Damages
- Contractor's Call-Back Warranty
- Delays



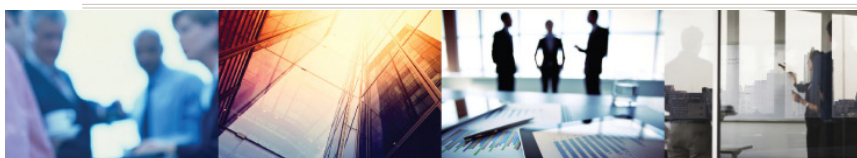
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Waiver of Consequential Damages

- AIA – Broad Waiver
- ConsensusDocs – Broad Waiver with Insurance Exception
- EJCDC – No Waiver
- AGC of MN – Broad Waiver with Space for Exclusions

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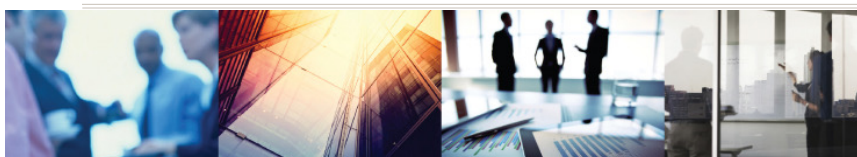


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Differing Site Conditions

- AIA – Provides relief for Type I and Type II differing site conditions.
- ConsensusDocs – Similar to AIA; relief for both Type I and Type II.
- EJCDC – More restrictive; limits ability to rely on owner-provided information.
- AGC of MN – Less detailed; equitable adjustments are appropriate for “discovery of different, concealed or unknown site conditions.”

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Indemnification

- AIA – One-sided indemnity in favor of Owner.
- ConsensusDocs – Mutual indemnity provisions.
- EJCDC – Similar to AIA.
- AGC of MN – Significantly different; covers wider variety of claims.

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Liquidated Damages

- AIA – Space for liquidated damages, but no standard language; substantial completion only.
- ConsensusDocs – Contains standard language to be used; substantial completion only.
- EJCDC – Allows liquidated damages for both substantial and final completion.
- AGC of MN – Has a built-in clause where the parties can insert a cap on liquidated damages and has a built-in clause providing for an early completion bonus.

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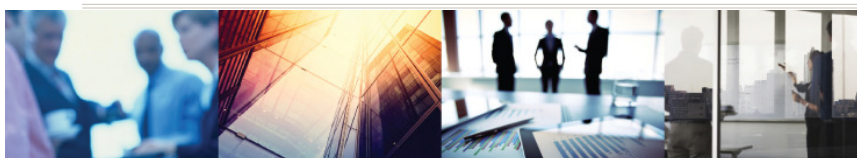


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Contractor's Call-Back "Warranty"

- AIA – Not a true warranty; promise to come back and make repairs for first year.
- ConsensusDocs – More attractive to contractors; Owner obligated to give contractor a right to repair after one year.
- EJCDC – More favorable for owners than AIA and ConsensusDocs.
- AGC of MN – Similar to ConsensusDocs.

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Delays

- AIA – Combines types of delays; “passive” regarding damages for delay.
- ConsensusDocs – Specifically allows for damages for owner-caused delays.
- EJCDC – Different provisions for different types of delays; longer time to assert claims.
- AGC of MN – Allows compensation for *force majeure* delays.

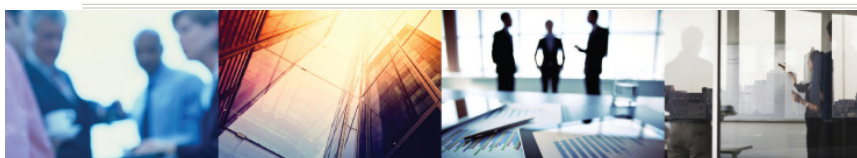
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AGC of Minnesota Owner-Contractor Agreement



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Prefabrication/Modular Construction

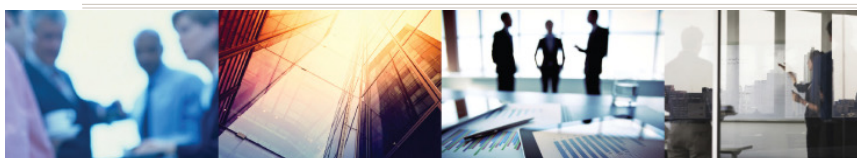
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Computer Software for Contract Review



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Questions?