

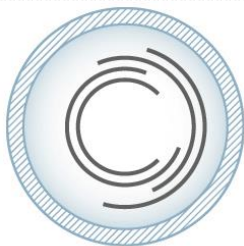
New 2017 ConsensusDocs Standard Contracts: How ABC Members Can Stay Ahead of the Curve



Brian Perlberg, Esq.

ConsensusDocs, Executive Director & Sr. Counsel.

bperlberg@ConsensusDocs.org



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Keeping You Ahead of the Curve

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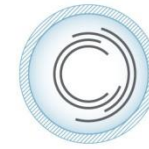
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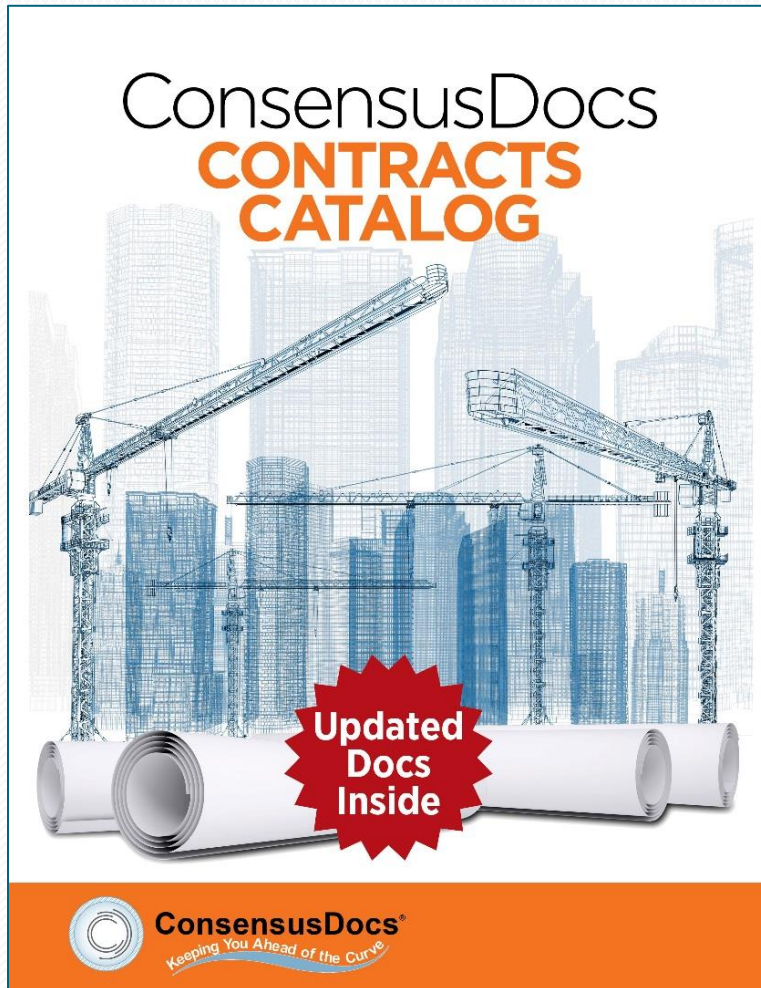
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5 Year Update Published Dec 7th



FOR IMMEDIATE RELEASE
December 7, 2016

ConsensusDocs

Washington, D.C. – Today, ConsensusDocs announced the release of its 5 Year Update, a series of revisions to many of its popular contract forms.

Contracts are the foundation of the construction industry. ConsensusDocs publishes the industry's leading contracts that advance project performance, reduce risk, and impact insurance, legal, and financial outcomes.

"This update reaffirms the value of ConsensusDocs contracts and makes sense for today's market," said John J. O'Connell, Executive Director. He added that the update addresses changes in the insurance market, project delivery, and published. Fundamental changes to the contracts include clearer communications, clear allocation of risk, and improved dispute resolution.

After soliciting and receiving feedback from users, ConsensusDocs forms released today were developed by the ConsensusDocs Council, a group of industry leaders from the 40 member organizations that make up the ConsensusDocs family of contracts.

Just Published:

- ConsensusDocs 310 Owner & Design Professional Short Form Agreement
- ConsensusDocs 315 Owner & Design Professional Short Form Agreement
- ConsensusDocs 320 Owner & Design Professional Short Form Agreement
- ConsensusDocs 325 Owner & Design Professional Short Form Agreement
- ConsensusDocs 330 Owner & Design Professional Short Form Agreement

Coming in early 2017:

- ConsensusDocs 235 Owner & Design Professional Short Form Agreement
- ConsensusDocs 245 Owner & Design Professional Short Form Agreement
- ConsensusDocs 410 Owner & Design-Builder Agreement (Cost of Work Plus Fee with GMP)

“Refinements addressing changes in case law, the insurance market, technological advances, and terminology refinements are being published”

ConsensusDocs 200

Owner/Constructor Agreement & Gen. Cond. (2016)



ConsensusDocs® 200 STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTOR (Lump Sum)



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Red Boxes: Instructions for fields that are typically required to complete contract.
Blue Boxes: Instructions for fields that may or may not be required for a complete contract.
Green Boxes: Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at www.ConsensusDocs.org/guidebook.

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ConsensusDocs® 200 - Standard Agreement and General Conditions Between Owner and Constructor - ©2011, Revised 2016. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited.

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).

Vertical, Not Horizontal Exhaustion

“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).



Bond-Penal Sum

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
- Language in ConsensusDocs 235, 410, 500.

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.

Design Delegation

Professional Liability Insurance

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.

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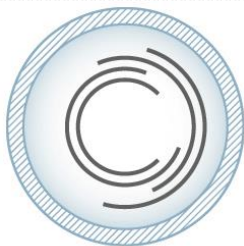


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