



ConsensusDocs®
BUILDING A BETTER WAY

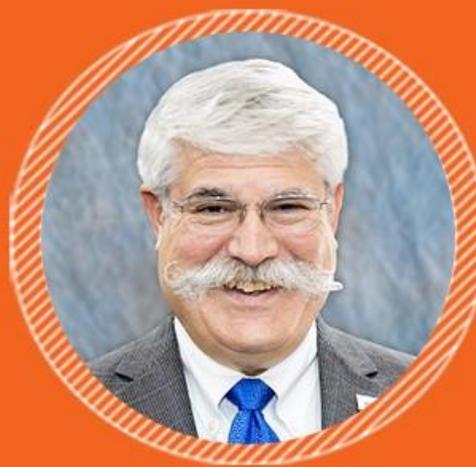
LIVE WEBINAR | Monday, October 9th at 2 PM ET

A Comprehensive Overview of the Recent ConsensusDocs Updates



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20 ConsensusDocs= 20 in 07

 **ConsensusDOCS**[™]

ConsensusDOCS[™] proudly endorsed by the following:

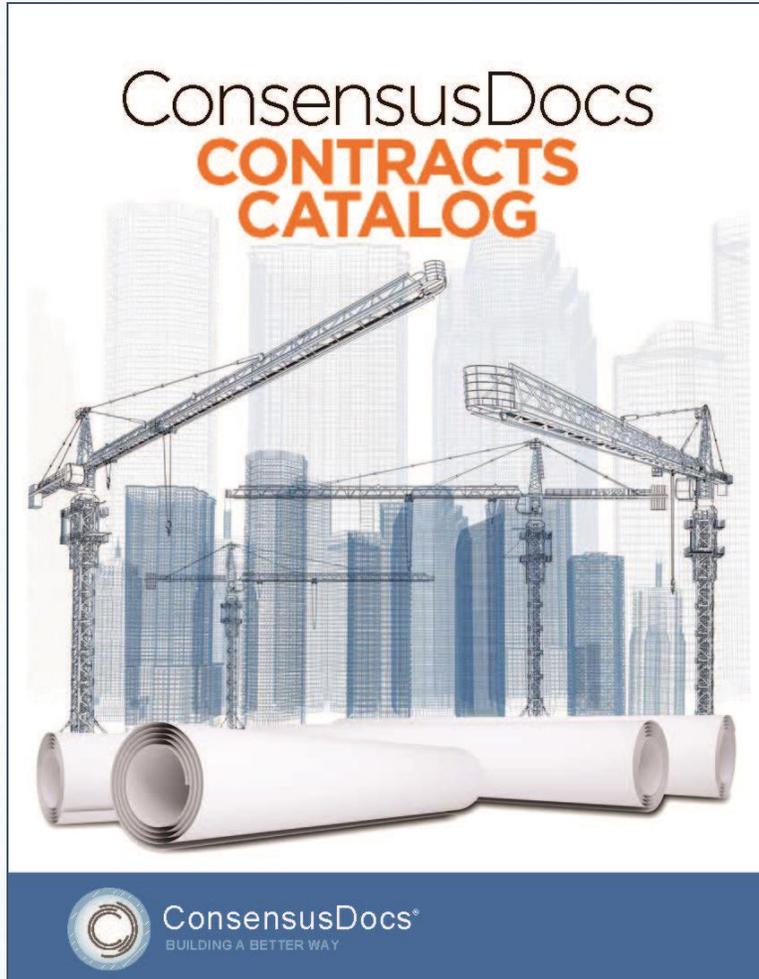
ALL



The ConsensusDocs Coalition 40+ Construction Industry Associations



100+ Contracts



- **200 Series** – General Contracting
- **300 Series** – Collaborative
- **400 Series** – Design-Build
- **500 Series** – Construction Management
- **700 Series** – Subcontracting
- **800 Series** – Program Management
- **900 Series** – P3s

ConsensusDocs 16+ Years



1 Goal

Improve construction with better contracts.



16

Years in business.



115

Standard contract documents.



40+

Leading construction associations participating in the Coalition.



3,000+
Subscribers.

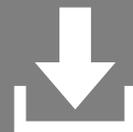


\$1,000,000+

In donated free educational licenses.



**\$100+ Billion in
construction contracts**



**NO REPORTED
COURT CASES**

Integrated Agreement Structure vs Fractured

ConsensusDocs 200

- One integrated document - agreement + GCs
- Avoids conflicts between two documents
- Easier for contract administration with commercial terms visible
- Minimizes the risk of accidentally altering additional provisions

AIA A201

- General terms and conditions are separate from the agreement, but included in Project Manual
- Great care must be taken to ensure the change is reflected throughout both documents and does not inadvertently alter or conflict with another provision of either document
- Beware of referencing GCs but not showing modifications or referring to a website with ever-changing information

Top Advantages with ConsensusDocs

- **Active Owner** vs passive + A/E's quasi-judicial authority
- **Plain English** vs. “Legalese”
- **Direct and positive communications** vs. contractual silos
- Track record = less reported case law + better project results
- Fair works (attract the best contractors at their best prices)
- Updated more often than once per decade
- Best practices and industry firsts
- IPD, Price Escalation, Prefab, IPDish, BIM, Design-Assist, Green, Project Financial Info, Fed Sub



Delegated Design §3.15

More Robust and Specific Procedures & Standards

- Provides a more specific process
- Requires design coordination and responses from the lead design profession for proposed delegated design plans
- Creates a CONSISTENT standard of care for all delegated design
- Consistent standards from Prime and Subcontractor delegated design
- “Constructor must conform its delegated design to the performance and design criteria provided” §3.15.

Consequential Damages

- Excludes insurance coverage and proceeds paid:

6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.5 and excluding losses covered **and proceeds paid** by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below.

Eliminates Existing Structures from Property Insurance Coverage

10.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Constructor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, **including existing structures**. This insurance shall also: (a) name Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:



Insurance Proceeds Paid and Reasonable Attorneys' Fees

10.3.5 To the extent ~~of the limits of Constructor's CGL proceeds are paid from Constructor's CGL policy~~ specified in §10.2.1 or [_____] dollars (\$[_____]), whichever is more, Constructor shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including ~~attorneys' reasonable attorneys'~~ fees, in connection with or arising out of any damage or alleged damage to any of ~~Owner's Owner's~~ existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent or intentionally wrongful acts or

Uncovered Work CD 200



Revised language clarifies that the cost to uncovered work is not compensable if the owner instructed that the work be left uncovered §3.10.

Submittals and Interim Directives

- Clarified that owner can take other appropriate action beyond accepting or rejecting
- Constructor must submit a submittal schedule w/i 30 days
- Clarifies an owner's issuing an interim directive doesn't necessarily impact cost or schedule ([ConsensusDocs 203](#) form also revised).

Cost-of-the-Work

- Percentages for profit and overhead is now treated as one number (blank) to be inserted, not separate (§8.3.3)
- Used Overhead as a defined term throughout (§2.4.18)
- Added items incurred due to emergency affecting safety (§8.3.3.15)
- Added reasonable and necessary legal, mediation, and arbitration fees and costs not associated with a dispute between the parties (§8.3.3.16)
- Clarified that all reimbursable attorneys' fees must be reasonable (§8.3.3.16, §10.3.5, §11.2.2).



Hazardous Waste Indemnification

Created a duty to defend as part of a Constructor's indemnity obligation to hold the owner harmless for hazardous materials brought to the site by the Constructor or someone the Constructor is liable (§3.13.7.3).



Warranty for Owner-Provided Materials & Equipment

Clarified that Constructor's warranty obligations to correct material and equipment defects for owner-provided materials equipment are limited to installation defects (§3.8.2).



Correction of Work by Owner or Covered by Property Insurance

Clarified that Constructor's obligations to remedy damage or loss does not apply to damage covered by an owner's property insurance or is attributable to the owner or the owner's separate contractors (§3.11.5).



Other Revisions

Statute of Repose & License to Use the Design

- Added statute of repose in addition to statute of limitations as reasons for barring commencing arbitration (§12.5.11). Some state courts have ruled that these time bars don't apply to arbitration, if not stated in the contract
- Simplified the language requiring the owner to obtain the right for Constructor and Subcontractors to use design documents (§2.3.1). Revised language also is more appropriate when an owner has in-house licensed design professionals produce the design documents.



Contingent Assignment & No Waiver of Performance

- Constructor shall include a provision in its Subcontract and **Supplier** agreements that Subcontractor and Supplier is obligated to accept contingent assignment §5.3.2
- Clarified the “no waiver of performance” language so that not necessarily enforcing or insisting upon a contractual right does not waive such contractual right by implication. §13.6

Changes to Subcontracts ConsensusDocs 750

- Prime Agreement is now defined as a definition at §2.6.7
 - "Prime Agreement" means the agreement between the Constructor and Owner for the construction of the Project
- Conforming changes from Prime Agreement incorporated into the subcontract agreements.

When to Use Which Document?

ConsensusDocs: Long vs Short

- Short Form vs Long Forms
- Lump Sum vs. cost of the Work with a GMP



Questions?



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