

AIA CONTRACT - IS IT SET IN STONE?

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If you're in the business of commercial real estate, you are bound to have come across the sometimes-dreaded American Institute of Architects (AIA) contract, the most commonly used contract for construction projects in the United States. We say that its sometimes dreaded because the form is lengthy and somewhat dense. There is also a misconception that because the contract is a pre-set form, it cannot be negotiated or amended. But as you know, everything can be negotiated.

Below is a summary of some provisions in the AIA contract that you should pay particular attention to and if needed, should be negotiated in a way that helps your clients. While we are lawyers, the list below should not be taken as legal advice for you or your clients. Each deal and client is different and may require a different review of the contract. Should you need a legal review of a contract, please contact us.

PERIOD OF PERFORMANCE

Make sure that the commencement date and the substantial completion date of the project is a timeframe that makes sense and works for you. Not completing a project on time can lead to delay costs including liquidated damages and other ancillary costs of additional project construction.

PROGRESS PAYMENTS

Contractors want most of their payment at the beginning stages of the project while the other party always wants to hold money for substantial completion. You can negotiate the amounts and trigger dates for payment so that you can protect your client against delays in the project.

INDEMNIFICATION

Indemnification means that one contractual party agrees to assume responsibility for certain judgments resulting from third-party claims against the other party. This clause deserves special attention in every contract and should at the very least be made mutual so that each party gets its costs covered if it is sued because of something caused by the other party.

DELAYS

Delays are inevitable in many different kinds of projects. But the risk of dealing with the fallout from project delays can be managed through contract negotiation. You don't want your client to bear the brunt of delay costs caused by the other party. Liquidated damages or other compensable damages

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can be negotiated here.

CONCLUSIONS:

Although the AIA contract is seen as a boilerplate static document, there are important provisions that should be on your radar and amended if necessary so that your client is protected. We suggest that any amendments be drafted by an attorney with experience in construction and ancillary industries.

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