

## **DOCUMENT 00 73 00 - SUPPLEMENTARY CONDITIONS**

AIA Document A201-2007, in its entirety, shall constitute the General Conditions of the Contract for Construction (the "General Conditions"). These Supplementary Conditions of the Contract for Construction ("Supplementary Conditions") are attached to and made a part of the Contract Documents and are intended to modify and/or supplement the General Conditions. Capitalized terms used herein but not defined herein shall have the same meanings as in the General Conditions.

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### **ARTICLE 1 GENERAL PROVISIONS**

1. Subparagraph 1.1.9 - Other Definitions: Add the following new Subparagraph 1.1.9 as follows:

#### **1.1.9 OTHER DEFINITIONS**

.1 "As required" shall mean as required by regulatory bodies, by referenced standards, by existing conditions, by generally accepted construction practice, or by the Contract Documents.

.2 "By Others" refers to work that is not part of the Contract.

.3 "By Owner" refers to work that will be performed by Owner or Owner's agents at Owner's cost.

.4 "Equal", "accepted equal", and "approved equal" shall mean as accepted, in writing, by Architect as being of equivalent quality, utility, and appearance.

.5 "Furnish" means supply only, do not install.

.6 "Install" means install only, do not furnish.

.7 "Provide" means furnish and install.

2. Subparagraph 1.2.2: Add the following new wording to the end of Subparagraph 1.2.2:

Documents prepared by entities other than Architect or its consultants may be included with documents prepared by Architect or its consultants for convenience in pricing, bidding, permit application, construction or other purposes. The inclusion of such documents not prepared by the Architect or its consultants within the Contract Documents shall not imply that Architect has reviewed, approved or is responsible for the accuracy or completeness of such documents.

3. Paragraph 1.5 - Ownership and Use of Drawings, Specifications and Other Instruments of Service: Add the following new subparagraph 1.5.3:

§1.5.3 In the event of any unauthorized use, reuse, transfer or modification of the Drawings, Specifications or other documents by Contractor, any lower tier contractor or material supplier, or other

person or entity under Contractor's direct or indirect employ, Contractor agrees to indemnify, defend and hold Owner, Architect, their officers, directors, shareholders, employees, agents, and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing to or resulting from any and all persons, firms, or any other legal entities on account of any damages or losses to property or persons, including, but not limited to, injuries or death or economic losses arising out of such unauthorized use, reuse, transfer or modification, except where Architect is found to be solely liable as between the parties hereto as well as between any other persons, firms or other legal entities for such damages or losses by a court or forum of competent jurisdiction.

4. Subparagraph 1.6 - Transmission of Data in Digital Form: Add the following sentence at the end of Subparagraph 1.6

Any electronic transfer of Drawings, Specifications or other documents ("Data") by the Architect to the Contractor shall be subject to the terms of the Architect's standard Data Transfer Agreement, which shall be executed by the Contractor.

### **ARTICLE 3**

### **CONTRACTOR**

5. Subparagraph 3.2.1: Add the following new sentence to the end of Subparagraph 3.2.1:

Additionally, Contractor acknowledges and agrees that the information contained in the Contract Documents is adequate and sufficient for completion of the Work.

6. Subparagraph 3.2.4: Revise the second sentence of Subparagraph 3.2.4 to read as follows:

If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, or reasonably should have recognized any errors, inconsistencies, omissions or nonconformity and failed to do so, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

7. Subparagraph 3.2.5: Add the following new Subparagraph 3.2.5:

**§3.2.5** In the event of conflicts or discrepancies among the Contract Documents, the following order of precedence shall govern: (1) Amendments and revisions (such as change orders), with those of later date taking precedence over those of earlier date; (2) the Agreement; (3) the Supplementary Conditions; (4) the General Conditions; (5) Drawings and Specifications. Drawings shall govern Specifications for quantity and location, and Specifications shall govern Drawings for quality and performance. In case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

8. Subparagraph 3.4.2: Add the following new text to the end of Subparagraph 3.4.2:

Any requests for substitution shall be made in a timely manner and in full compliance with all Contract requirements. By making a request for substitution, Contractor: (1) represents that the Contractor has investigated the proposed substitute product and determined that it is equal to or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

9. Subparagraph 3.7.3: Modify Subparagraph 3.7.3 as follows:

**§3.7.3** If the Contractor performs Work ~~knowing it to be~~ which Contractor knows or should know is contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

10. Subparagraph 3.9.1: Add the following new text to the end of Subparagraph 3.9.1:

The superintendent shall be approved by Owner and shall not be replaced without Owner's prior approval. The superintendent shall be familiar with the job site, the Contract Documents, and all applicable rules, regulations and requirements of all authorities having jurisdiction over the Work or the site.

11. Subparagraph 3.10.1: Add the following to the end of Subparagraph 3.10.1:

Such schedule shall be a computer generated critical path method (CPM) schedule showing at a minimum: (1) the early and late start time for each major construction activity; (2) all "critical path" activities and their duration; (3) late order dates for all long lead time materials and equipment; and (4) critical Owner decision dates.

12. Subparagraph 3.10.4: Add the following new Subparagraph 3.10.4:

**§3.10.4** Failure of Contractor to submit or keep current the construction schedule and submittals schedule as required by the conditions of the Work, shall be grounds for withholding of payments due Contractor by Owner, until such schedules are provided.

13. Subparagraph 3.11: Modify the first sentence of Subparagraph 3.11 as follows:

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals, as well as one copy of the approved permit set.

14. Subparagraph 3.12.6: Add the following text to the end of Subparagraph 3.12.6:

Incomplete, uncoordinated or incorrect Shop Drawings and other submittals shall be returned to Contractor who shall be held responsible for all time delays and extra costs of review or handling by Architect or Owner, because of such submittals being incomplete, uncoordinated or incorrect.

15. Subparagraph 3.12.7: Modify Subparagraph 3.12.7 as follows:

**3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved-reviewed and returned by the Architect.

16. Subparagraph 3.12.8: Modify Subparagraph 3.12.8 as follows:

**3.12.8** The Work shall be in accordance with approved-Architect-reviewed submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval-review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval-review thereof. If more than one submittal review stamp (Architect's and one or more of its consultants' stamp) appears on a submittal, the most stringent action and notations thereon shall apply. Signature on a submittal review stamp by the Architect or a consultant does not imply that it has reviewed Work not within its professional discipline or scope of services.

17. Subparagraph 3.12.10: Modify the second to last sentence of Subparagraph 3.12.10 as follows:

Pursuant to this Subparagraph 3.12.10, the Architect will review, ~~approve~~ or take ~~other~~ appropriate action on submittals only for the limited purpose of checking for conformance with information-given-and-the visual and aesthetic design concept expressed in the Contract Documents.

18. Subparagraph 3.18.1: Revise Subparagraph 3.18.1 as follows:

**§3.18.1** To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, liabilities, suits, demands, damages, losses, costs and expenses, including, but not limited to reasonable attorneys' fees, and all legal expenses, and fees incurred through appeal, and all interest thereon, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph 3.18.

19. Paragraph 3.19: Add the following new Paragraph 3.19:

**§3.19 DESIGN/BUILD**

**§3.19.1** If Contractor provides and/or retains its subcontractors or others to provide Design/Build Work for specified portions of the Project, Contractor shall be responsible directly to Owner for those portions of the Project, including but not limited to: (1) preparing engineering and other drawings and specifications for all components of the Design/Build portion(s) of the Work, (2) complying with Project requirements and space limitations, (3) coordinating and interfacing with other trades and consultants, and (4) obtaining approvals from authorities having jurisdiction over the Project. Contractor, its subcontractor(s) or their design professional(s) shall be the Professional(s) of Record for their portion(s) of the Design/Build Work.

**§3.19.2** Architect shall have no responsibility for the design, installation or performance of Design/Build portions of the Project including but not limited to reviewing such designs and/or Work and/or certifying the payment applications for the same. Architect's services in connection with any Design/Build work shall be limited to checking such designs for general conformance to major space limitations and the visual and aesthetic design concept as expressed in the Contract Documents. Such checking by Architect of more than two proposals for the same Design/Build portion of the Project shall be compensated as Additional Services.

**§3.19.3** When the Contract Documents or authorities having jurisdiction over the Project require certificates or statements of performance characteristics of materials, systems or equipment, or professional seals, calculations, or other certificates or statements regarding such Design/Build portions of the Project, Owner will require Contractor to provide them, and Owner and Architect will be entitled to rely on them to establish that the designs, materials, systems, equipment and such Work will meet the performance criteria required by the Contract Documents.

**ARTICLE 4**

**ARCHITECT**

20. Subparagraph 4.2.2: In the first sentence of this Subparagraph 4.2.2, replace the words "appropriate to the stage of the construction, or as otherwise agreed with the Owner" with the words "necessary in the judgment of Architect or as otherwise agreed by Owner and Architect in writing".

21. Subparagraph 4.2.3: Add the following text to the end of Subparagraph 4.2.3:

Architect's duties shall not extend to the receipt, inspection and acceptance on behalf of Owner or Contractor of materials, furniture, furnishings and equipment at the time of their delivery to the premises or installation. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Architect in Architect's administration of the Contract for Construction, or by tests, inspections or approvals required or performed by persons other than Contractor. If Architect recommends procedures, either directly or by reference to standards or manufacturers' recommendations, Contractor shall adopt such recommendations as its own, or inform Architect if exception is taken to such procedures, and may utilize or propose alternative procedures that Contractor will warrant as fulfilling the intent of the Contract Documents.

22. Subparagraph 4.2.4: Add the following text to the end of Subparagraph 4.2.4:

Should any direct communications become necessary, copies of the communications shall be promptly forwarded to the proper party or parties as set forth in this Subparagraph 4.2.4.

23. Subparagraph 4.2.5: Modify Subparagraph 4.2.5 as follows:

**4.2.5** Based on Architect's on-site evaluations and the data comprising ~~of the Contractor's Applications for Payment, the Architect will review and certify, to the best of its knowledge, information and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the amounts due the Contractor is entitled to payment of the amount certified~~ and will issue Certificates for Payment in such amounts.

24. Subparagraph 4.2.7: Modify the first sentence of Subparagraph 4.2.7 as follows:

Architect will review and ~~approve or take other~~ appropriate action upon, the Contractor's submittals required by the Contract Documents, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the visual and aesthetic design concept expressed in the Contract Documents.

## **ARTICLE 8**

### **TIME**

25. Subparagraph 8.3.1: Starting on the fourth line of Subparagraph 8.3.1, delete the words, "pending mediation and arbitration; or by other causes which the Architect determines may justify delay" and add the following text at the end of Subparagraph 8.3.1: "A time extension shall be Contractor's sole remedy and there shall be no compensation for any such delays other than those resulting from the active interference of Architect, Owner or their employees or agents."

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

26. Subparagraph 9.4.2: Add the following text to the end of Subparagraph 9.4.2:

Further, Architect shall not be obligated to issue any Certificate for Payment covering work by Design/Build contractors or subcontractors, work by Owner's separate contractors, or other work for which Architect is not providing full services.

27. Subparagraph 9.5.1.8: Add the following new Subparagraph 9.5.1.8:

**.8** rejection or non-acceptance of Work by any governmental agency having jurisdiction.

28. Subparagraph 9.6.4: Add the following text to the end of Subparagraph 9.6.4:

At the Owner's sole discretion, payments may be made by check jointly payable to Contractor, its Subcontractor or supplier, and any applicable labor union trust fund.

29. Subparagraph 9.8.1: Modify this Subparagraph 9.8.1 as follows:

**9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and all required final inspections and permits have been obtained so that the Owner can occupy or utilize the Work for its intended use, subject only to completion of minor items (punch list).

30. Subparagraph 9.8.3: Add the following text to the end of Subparagraph 9.8.3:

If upon this subsequent inspection, Contractor has not yet completed the Work, and further field reviews by Architect are required, Contractor shall be responsible to Owner for any additional cost to Owner of further reviews by Architect.

31. Subparagraph 9.8.4: Add the following text to the end of Subparagraph 9.8.4:

In the absence of such certificate, the date of Substantial Completion shall be in accordance with Subparagraph 9.8.1.

32. Subparagraph 9.9.3: Add the following text to the end of Subparagraph 9.9.3:

, nor shall it start the guarantee or warranty period.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§10.3 HAZARDOUS MATERIALS**

33. Subparagraph 10.3.1: Modify Subparagraph 10.3.1 as follows:

**§10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials, including but not limited to asbestos or polychlorinated biphenyl (PCB) , lead-based paints or any other potentially toxic or hazardous contaminants, materials, pollutants which for the purpose of this Article 10 means solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and wastes. Prior to commencement of the Work, Contractor shall require manufacturers of all materials and equipment for the Work to provide certifications, warranties or statements that such materials or equipment (1) are free of injurious amounts of hazardous materials or (2) contains specific amounts of hazardous materials, and provide recommendations regarding handling of such. Such certifications, warranties or statements shall be in writing in a form acceptable to Owner, and shall be forwarded by Contractor to Owner. If the manufacturer states that a material or equipment contains injurious amounts of hazardous materials, Owner shall be afforded adequate and timely opportunity to order that other materials be substituted without causing delay to the Project. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

34. Subparagraph 10.3.6: Modify Subparagraph 10.3.6 as follows:

**§10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred, provided the Contractor has complied fully with its obligations under Subparagraph 10.3.1.

## **ARTICLE 11                      INSURANCE AND BONDS**

35. Subparagraph 11.1.5: Add the following new Subparagraph 11.1.5:

**§11.1.5** If Contractor fails to secure and maintain the required insurance, Owner shall have the right (but not the obligation) to secure same in the name and for the account of Contractor, in which event Contractor shall pay the cost thereof and shall furnish upon demand all information that may be required in connection therewith.

36. Subparagraph 11.3.1.4: Add the following text to the end of this Subparagraph 11.3.1.4:

It shall not, however, cover Contractor's equipment, machinery or tools.

37. Subparagraph 11.3.3: Add the following text to the end of Subparagraph 11.3.3:

, to the extent Owner's insurance covers such losses.

## **ARTICLE 12                      UNCOVERING AND CORRECTION OF WORK**

38. Subparagraph 12.1.1: Modify Subparagraph 12.1.1 as follows:

**§12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, or to requirements of any public authority having jurisdiction over the Work, it must, if required in writing by the Architect or Owner, be uncovered for the Architect's or Owner's or public authority's examination and be replaced at the Contractor's expense and without change in the Contract Time.

**END OF DOCUMENT 00 73 00**