

STANDARDIZED CONTRACTS:

*Streamlining Projects in
Today's Fast-Paced
Construction Market*

 **BRANDSTUDIO**
A CONSTRUCTION DIVE PLAYBOOK

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Keeping You Ahead of the Curve



Success in the construction business requires assuming and managing risk. Outdated or unbalanced contracts cost construction companies money and time, and can break business relationships.

Negotiating a construction contract is one of the first and most important steps in creating a solid foundation for any building project. Ideally, contracts should align all project stakeholders' interests toward project completion. Drafting a contract from scratch is time consuming, costly and still includes traps and loopholes that leave a contractor susceptible.

Using fair contracts to get better project results with fewer claims makes sense for today's construction industry, but how do you create an unbiased contract that balances risks and rewards appropriately among all parties? The answer: *standardized contracts*.

Benefits of using standardized construction contracts

Getting engagement and “buy-in” from all parties on how a project should flow – and who’s responsible for each part – is key to a project’s success, and standardized contracts help expedite this process.

Traditional, customized construction contracts often favor the drafting party and must be carefully

reviewed by legal counsel due to their unique language. Likewise, studies by the Construction Industry Institute (CII) and other groups indicate that allocating risk unfairly damages project results. Fair and balanced standardized contracts set a foundation for construction projects’ success; unbalanced contracts set projects up for failure.

“ I would encourage the industry to start with standard documents because they’re off the shelf. The biggest advantage is by starting with standardized documents that are already vetted by industry experts.”

— SCOTT JENNINGS, P.E. of SJ Construction Consulting, LLC in Honolulu, Hawaii



Improve communication and clearly define roles among all parties

At the heart of almost every construction dispute is the breakdown of communication. Disputes that are not addressed can fester. Parties then lead projects down an all too familiar destructive path of delayed schedules and cost overruns. Those involved end up spending time, money, and other resources on rectifying the situation and mending relationships to get the project back on course.

From owners and architects to engineers and builders, it's the collaboration between participants that is central to a solid foundation for the project. Collaboration is most important during design development when adjustments can most easily and cost-efficiently be made – before one cubic yard of earth is moved or one steel beam is ordered.

Better collaboration helps reduce requests for information (RFI), which were recently estimated by Navigant Construction to cost \$1,080 per request. One project can easily be plagued by 1,000 RFIs.

When forming a project team, it is best to choose a standard contract that is easily understood by the team and not written in legalese. This will both avoid costly disputes and help practitioners in the field to administer the contract. Traditionally, standard contracts centralize communications flow and decision-making in the hands of the design professional. Unfortunately, stifling this creates silos and inefficiencies. The construction industry is among the most litigious in the U.S. due to this fragmentation. A better approach, taken in some standard contracts, is to encourage direct, positive communication and require project and senior party people to address difficult issues as they arise in the field before they become intractable disputes.

The Temecula Valley Hospital, a 180,000-square-foot, 140-bed acute care hospital in Temecula, California, illustrates that a more collaborative approach leads to better results.



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— STEVEN WILSON, DBIA, Principal of HMC Architects, headquartered in Ontario, California

“The owner wanted a team that could deliver a hospital that was 30% less in cost and 30% more efficient than the average California hospital,” explains Steven Wilson, DBIA, Principal of HMC Architects, headquartered in Ontario, California.

Before any drawings were created, the owner assembled a highly collaborative team and established a risk/reward contract using ConsensusDocs 300, which would guarantee all signers’ labor cost but also require a guaranteed price by putting all profits into one pool. “This arrangement would insure collaboration and innovation from all signers to meet the requirements of budget and schedule while adhering to the owner’s established conditions of satisfaction.”

When all parties agree that the contract and project roles are well defined, it creates a more cooperative environment. Parties experience fewer disputes and realize time and cost savings, which lead to a more efficient and profitable project.

Tap into multiple industry experts

While the construction industry has experienced an increase in the use of “standard” contracts over the years, it has often experienced more fragmentation than collaboration. Earlier versions of “standard” contracts tended to favor one industry segment—the originating one. Standardized contracts, developed and endorsed by multiple experts representing many industries, are the solution to that fragmentation.

Standardized contracts benefit construction firms that cannot afford to hire an entire legal team to continuously review contracts throughout the design build process. Further, because they are examined by multiple industry experts, these contracts are designed to be fair and balanced for all parties involved in the project.

Using a standard contract means “everyone starts on a level playing field in understanding what the

documents mean,” notes Matt DeVries. DeVries has represented all parties in the construction industry for nearly 20 years. “Standard contract documents have always played an important role in my practice. But newer approaches to provide a standard contract that was negotiated at the national level to be fair to all parties is much more attractive to me and my clientele, so we don’t have to rehash the same clauses everyone knows protects a designer, owner or contractor over the other project parties.”

“ConsensusDocs is a library of documents that cover all your contracting needs for the business of construction ... put together by people who are experts in their field,” explains Brian Cubbage, a lawyer with Heico Construction Group, LLC in Kansas City, Missouri.



Allocate risk fairly and equitably

While all project participants are entitled to protect their bottom line, what sometimes gets lost is the project's bottom line. Those parties higher up in the contractual chain have the power to transfer risk to a weaker party, and the efficiency of the project ultimately suffers. Custom contracts are part of the problem because they have traditionally favored the drafting party.

“We like to use standardized contracts because the risk is allocated more evenly, where it's not weighted towards the contractor, owner or architect,” notes Mark Lancaster, vice president/project manager for WAR Construction in Tuscaloosa, Alabama. “The advantages are continuity and efficiency, and we don't end up with any loopholes where there could be a claim that wasn't covered in the contract.”

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Proactively address rapid changes in technology, insurance and terminology

Also of vital importance to stay ahead of the curve is a process for addressing changes in technology advances, the insurance market, case law and terminology within your contracts. Even if contract language is just a few years old, it can lead to liability and risk.

The construction industry is evolving rapidly, and tech tools such as Building Information Modeling (BIM) and project delivery methods like Integrated Project Delivery (IPD) are enhancing construction efforts and accelerating project schedules. Technological developments also impact the way

we collaborate and share information – including the greater reliance on electronic information, seamless transmission of that information and even growing use of digital signatures all through a cloud-based system.

While these advancements are generating a high level of efficiency and streamlining the construction process, they can create potential risks if agreements are not reviewed regularly and modified accordingly. Often, contractors do not

think to have a legal professional review their contracts to account for these changes until it becomes an issue.

Regularly updated standardized contracts provide a better way to adapt to changes because they are updated across the board with best practices at the national level by experts, rather than by each individual company struggling just to keep up with today's changes in law, technology, and insurance market.

“ It’s very important for the surety industry and bond producers who are working directly with construction firms to make sure such firms are using standardized forms that are fair, equitable and up to date.”

— MARK MCCALLUM, CEO of the National Association of Surety Bond Producers



Achieving great efficiency, saving time and increasing profit

Contracts determine some of the most fundamental issues in construction projects, such as time, money and scope of responsibilities. Your standard contract documents should encourage participants to have those conversations early to address the fundamentals as they relate to specific project considerations and risk profile.

One of the key elements in any construction project is the legal review of documents. DeVries notes that he's seen great efficiency gains by reviewing the contracts online, like what is found in ConsensusDocs. He can check the status of ongoing negotiations, edit contracts using a "track changes" feature, invite collaborators to review changes and even compare contract versions with one click.





Todd Hess Building Company used ConsensusDocs to facilitate the build of the Upshur Building project located in Portland, Oregon. The company stated, “The size and magnitude of a \$1.5 million project, with 20 subcontractors and a very aggressive schedule, broadcasts the need for organization and a speedy method in getting contracts out the door to the owner and subcontractors.”

Contracts are the foundation of every project, and with the complexity of today’s construction projects, using standardized, model documents as the starting point for construction agreements makes good business sense. A well-written standardized contract opens the lines of communica-

tion early, outlines the scope of work and creates an equitable distribution of risk – all of which streamline the construction process for greater efficiency and profit.

Jennings concludes, “I like a standardized contract that is written in plain speak and encourages the owners to get involved early on, which prevents all the fighting at the end of the job and saves a lot of money and time.”

Stay ahead of the construction contract curve while saving time and money. Streamline your project negotiations today with ConsensusDocs.

[Download a sample contract now.](#)

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ConsensusDocs are the only contracts written by leading design and construction industry organizations. ConsensusDocs provides a catalog of 100+ contract documents that incorporate fair risk allocation and best practices to represent the project's best interests versus any one party. For more information, please visit www.ConsensusDocs.org, call 866-925-DOCS (3627) or email support@ConsensusDocs.org.

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