


Understanding the Changes in the 2017 AIA Contract Documents The Standard General Conditions (A201)



Business of Design:
Understanding the Changes in the 2017 AIA Contract Documents
The Standard General Conditions (A201)

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June 7, 2017

Business of Design:
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The speaker for this program is:
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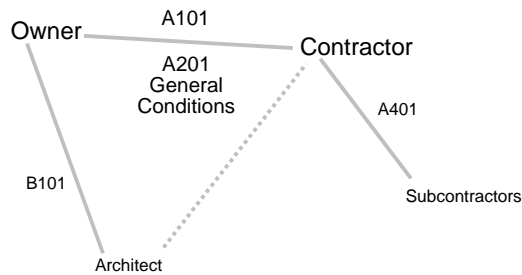
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Agenda

- Brief A201 Overview
 - History (1911 through the 16th Edition in 2017)
 - Contractual structure
 - Consistent language with design agreements
 - Supplementary conditions
- 2017 Release: What is New?
 - Key terms and Concepts
 - Changes and Enhancements
 - Insurance Exhibit

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Traditional Contractual Structure



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O/C Agreement to O/A Agreement

Consistent Language with Design Agreements

B101 § 3.6 - Construction Phase Services:

B101 § 3.6.1.1: "The Architect shall provide administration of the Contract . . . as set forth below and in AIA Document A201™-2017. . . ."

A 201 § 4.2.1 Administration of the Contract:

"The Architect will provide administration of the Contract as described in the Contract Documents..."

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O/C Agreement to O/A Agreement
Consistent Language with Design Agreements

<p>B101-3.6.1.2 "The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work,..."</p>	<p>A201- 4.2.2 "...The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work,..."</p>
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A503-2017
Guide for Supplementary Conditions

Use with the A201-2017

Provides:

- Instructions
- Recommendations for where to place project-specific information.
- Model language for additions or modifications
- To access, visit: <http://www.aia.org/A503>

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The 2017 Standard General Conditions of the Contract for Construction (A201)

Key Terms and Concepts

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Concepts That Continue from 2007

- Option of Initial Decision Maker (IDM)
- Preference for Alternative Dispute Resolution (ADR)
- Mutual Waiver of Consequential Damages

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A201 § 15.2.1

Initial Decision Maker (IDM)

- Initial decision by IDM is a condition precedent to mediation of disputes between Owner and Contractor.
- Unless Owner and Contractor otherwise agree, Architect serves as Initial Decision Maker.
- A Dispute Resolution Board or Independent Neutral could be used as the IDM

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A201 § 15.2.1

Role of the Initial Decision Maker

The Owner and Contractor have a disagreement arising from or relating to the project.

Owner or Contractor file a Claim with the Initial Decision Maker.

The IDM evaluates the facts around the Claim and approves, rejects, or states inability to resolve the Claim.

The IDM's decision is binding but is subject to mediation and adjudicated dispute resolution.

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Alternative Dispute Resolution

- The decision of an IDM may go to mediation as a condition precedent to binding dispute resolution.
- Binding dispute resolution may include litigation, arbitration, or another form of binding dispute resolution as selected by the parties.
- Both parties share the costs of mediation and arbitration equally.
- Both mediation and arbitration have to take place where the Project is located.

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Consequential Damages Waiver

- Non-direct damages
- Mutual consequential damages waiver added in 1997
- Provides benefit to both Owner and Contractor
 - Allows determination of exposure at contracting stage
 - Prevents runaway claims
- Parallel clauses important -- Similar clause in Owner-Architect even though owners rarely are liable for consequential damages to architects

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Changes and Enhancements

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Major Enhancements

- Digital Documents
- Project Communications during contract administration
- Contract administration obligations and time limits
- Claims and disputes
- Delays (weather)
- Contractual relationships and delegated design
- Termination by Owner for convenience
- Insurance Exhibit
- Sustainability Exhibit

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Digital Documents

- **Revised** - § 1.7 Digital Data Use and Transmission of Data in Digital Form (was § 1.6 in 2007 A201)

"The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form...the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols..."

- **New** - § 1.8 Building Information Models Use and Reliance

"...Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party....."

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Project Communications

§ 1.6 Written Notice required to one of the parties; between Owner/Contractor

When Notice is required under A201, **all** Notices now must be in writing including:

- Notices about additional cost or time
- Notices of Testing and Inspection
- Notice of Cancellation or Expiration of Insurance
- Notice of Contractor/Subcontractor agreements
- Notices about stopping the work for non payment
- Notices about the Work being ready for final inspection

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Financing before Construction Starts

§ 2.2.1 The Contractor can request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements prior to commencement of the Work

Financing after Construction Starts

§ 2.2.2 Following commencement of the Work the Contractor can request in writing that the Owner furnish reasonable evidence that the Owner has made financial arrangements to fulfill Owner obligations

§ 2.2.3 After the Owner has provided the required financial information the Owner cannot substantially change these arrangements without prior notice to the Contractor

§ 2.2.4 The Contractor is required to keep Owner financial information "confidential" if the owner identifies the information as confidential

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Project Communications

§ 3.10.1 Expansion of basic content required in the Contractor's Construction Schedule

- Show dates of commencement, required milestones, and Substantial Completion
- Apportionment of Work by construction activity
- Time required to complete each portion of Work
- Demonstrate an orderly progression of the Work
- Revised and updated at appropriate intervals

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Project Communications

§ 4.2.4 Conditions for allowing direct Communication between the Owner and Contractor

- Communications with subcontractors are through the Contractor
- Communications to Engineers and Consultants are through the Architect
- Communications with Separate Contractors are through the Owner
- The Contract Documents may specify other communication protocols

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Safety of Construction Means and Methods

§ 3.3.1 The Contractor can object to means or methods specified and can propose alternative means and methods.

- Contractor not required to perform the Work in a manner it deems unsafe
- The Contractor then proposes alternative approach
- The Architect reviews it to assure it is consistent with design intent

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Claims and Disputes

- § 15.1.3.2 Claims after Correction Period
- § 15.1.4 Continuing Contract Performance
- § 15.2.6.1 Initial Decision
- § 15.3.3 Mediation
- § 15.4.4 Consolidation or Joinder

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Delays (due to weather)

§ 8.3 Delays and Extensions of Time.

If the Contractor is delayed at any time in the commencement or progress of the Work by ... **adverse weather conditions documented in accordance with § 15.1.6.2** ...that the Architect determines justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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Contractor and Delegated Design

§ 3.12.10.1 The Contractor can rely upon the performance and design criteria provided in the Contract Documents.

§ 3.12.10.2 The Contractor is to provide the required certification for the design/engineering of delegated design Work.

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Termination for Convenience

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for **Work properly executed**, direct costs incurred by reason of the termination, **and the termination fee**, if any, set forth in the Agreement

- A101 includes a negotiated termination fee.
- As in the Termination for Convenience provision in the Owner-Architect agreement, Direct Costs for Termination still includes subcontractor costs that could encompass their overhead and profit on remaining work.

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The AIA Document A101-2017 Exhibit A, Insurance and Bonds

A New Format Separating Owner and Contractor Insurance Requirements

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Exhibit A, Insurance and Bonds

- Most, but not all, of the A201-2007 Article 11 Insurance and Bonds requirements are moved to the Exhibit:
 - Owner's Insurance
 - Contractor's Insurance
 - Additional Insureds
 - Performance & Payment Bonds
- Also used as an Exhibit to A102-2017 and A103-2017 but A104-2017 and A105-2017 (smaller and limited scope projects) continue to include integral insurance and bond requirements.

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Exhibit A, Insurance and Bonds

A.2 Owner's Insurance

- General Liability Insurance
- Required Property Insurance (unless placed on Contractor)
 - Coverage for direct physical loss or damage and ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.
 - Coverage for loss or damage to falsework and other temporary structures, and to building system from testing and startup.
 - Coverage for debris removal including demolition from enforcement of legal requirements and compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

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Exhibit A, Insurance and Bonds

Owner's Optional Insurance Coverages

- Optional Extended Property Insurance
 - Loss of Use, Business Interruption, and Delay in Completion Insurance
 - Soft Costs insurance for construction loan fees, leasing and marketing expenses, additional fees such as those of professionals needed for the completion of construction.
- Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.

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Exhibit A, Insurance and Bonds

A.3 Contractor's Insurance and Bonds

- "To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations."
- With respect to the Architect and Architect's consultants the required additional insured endorsement form is the ISO CG 20 32 07 04.

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Exhibit A, Insurance and Bonds

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contract shall procure professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

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Exhibit A, Insurance and Bonds

Remaining in A201-2017 are the following:

- Obligation to purchase insurance
- Required notice of cancellation or failure to purchase
- Waiver of subrogation right of insurers
- Settlement of an insured loss

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Contact and Resource Information

AIA Contract Documents education on AIAU:

aiou.aia.org/aia-contract-documents

Questions about AIA document content:

Email: docinfo@aia.org

Tel.: (202) 626-7526

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Online Resources

www.Schinnerer.com/AERiskmanagement

You can view or download claim studies, risk management information, contract language and commentaries.

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This concludes a course approved by:
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