

TABLE OF CONTENTS

<i>Dedication</i>	iii
<i>Acknowledgments</i>	v
<i>Foreword</i>	vii
CHAPTER 1 — INTRODUCTION	1
1. Overview	1
2. The Importance of the Construction Contract	1
CHAPTER 2 — STARTING WITH THE RIGHT DOCUMENT	3
1. Pricing Models	4
(a) Fixed price vs. cost plus	4
(b) Guaranteed maximum price and hybrid models.....	4
2. Forms of Agreement	5
CHAPTER 3 — PERFORMANCE OF THE WORK	7
1. General Obligation to Perform the Work	7
(a) Introduction	7
(b) Standard of care.....	7
(c) Scope of work.....	9
(d) Timely performance	9
2. Notice to Proceed	11
(a) Full notice to proceed	11
(b) Limited notice to proceed	12
3. Construction Safety	13
(a) Construction safety generally.....	13
(b) Occupational health and safety	13
4. Subcontractors and Suppliers	14
(a) Overview.....	14
(b) Payment of subcontractors and suppliers.....	16
(c) Title transfer.....	18
(d) Step-in rights	19
5. Changes to the Work	21
(a) What is a change order	21
(b) Valuing changes	23
(c) Schedule impact	24
(d) Negative change orders	25
(e) Change directives.....	25
6. Owner-Supplied Equipment	26
(a) Overview.....	26
(b) Construction coordination risk	26
(c) Performance risk	28

7. Intellectual Property	29
8. Hazardous Materials	30
9. Key Personnel	31
10. Construction Schedule	32
(a) Introduction	32
(b) Critical path and float.....	34
11. Construction Delay	35
(a) Delays attributable to owner or contractor	35
(b) Force majeure and weather delays.....	37
(c) Change of law.....	40
(d) Unknown or unforeseen conditions	41
(e) Recovery and acceleration schedules.....	42
12. Provisions for Secured Lenders	44
(a) Overview of lender direct agreements.....	44
(b) Contentious points in lender direct agreements.....	46
(c) Other provisions for secured lenders.....	47
CHAPTER 4 — PAYMENT FOR THE WORK	49
1. Fixed Price Contracts	49
2. Cost-Reimbursable Contracts	50
(a) Overview	50
(b) Fixed elements in a reimbursable contract	51
(c) Cost of the work	52
(d) Importance of definition of cost of the work for other pricing models	55
3. Guaranteed Maximum Price Contracts	55
(a) Overview	55
(b) Guaranteed maxim price bonus	56
(c) Optional GMP.....	57
4. Unit Price Contracts	59
5. Payment Schemes: Milestone Payments vs. Progress Payments	59
(a) Overview	59
(b) Progress payments	60
(c) Milestone payments	61
(d) Mobilization payments	62
6. Cash Allowances	63
7. Lien Legislation	63
(a) Overview of lien holdbacks	63
(b) Substantial performance	65
(c) Holdback letters of credit and holdback bonds	66
(d) Removal of liens	68

CHAPTER 5 — COMPLETING THE WORK	71
1. Substantial Completion	71
(a) Contractual significance.....	71
(b) Substantial completion vs. substantial performance.....	72
(c) Requirements of substantial completion.....	72
(d) Certification of substantial completion.....	74
(e) Phased completion.....	75
2. Punchlist and Punchlist Holdback	76
(a) Development of the punchlist.....	76
(b) Punchlist holdback	77
3. Final Completion.....	78
4. Warranties and Latent Defects	79
(a) Introduction to construction warranties	79
(b) Scope and remedy	79
(c) Warranty period.....	81
(d) Subcontractor and supplier warranties — transfer and enforcement.....	82
(e) Latent defects	83
CHAPTER 6 — LIABILITY.....	87
1. Title and Risk of Loss	87
(a) Title transfer.....	87
(b) Transfer of risk of loss	88
(c) Owner-supplied equipment.....	89
(d) International commercial terms (Incoterms®)	90
2. Indemnities	90
(a) Overview of construction indemnities.....	90
(b) Indemnification by the contractor	91
(i) Wilful misconduct and negligent acts and omissions of contractor and its subcontractors	91
(ii) Breach of contract, or violation of laws, regulations, or any applicable permits.....	92
(iii) Other indemnities	92
(c) Indemnification of the consultant.....	93
(d) Indemnification by the owner	93
3. Insurance.....	93
(a) Overview.....	93
(b) Liability insurance	94
(c) Builder's all risk	95
(d) Contractor's equipment	96
(e) Insurance certificates.....	96
4. Delay Damages	97
(a) Overview.....	97
(b) Delay liquidated damages	97

(c)	Other considerations	100
(d)	Bonus for early completion	101
5.	Securing the Contractor's Obligations	102
(a)	Letters of credit	102
(i)	Overview	102
(ii)	Amount	102
(iii)	Timing	103
(iv)	Draw conditions	103
(b)	Surety bonds	104
(c)	Parent company guarantees	106
6.	Securing the Owner's obligations	107
7.	Limits of Liability	108
(a)	Contractor's overall limit	108
(i)	General	108
(ii)	Scope	109
(iii)	Insurance and other recovered amounts	110
(iv)	Third party claims	110
(v)	Quantum	111
(vi)	Sample	111
(b)	Consequential damages	112
(c)	Liquidated damages	113
8.	Waivers of Claims	113
(a)	By contractor	113
(b)	By owner	114
(c)	Claims limitation period	114
CHAPTER 7 — DEFAULTS, TERMINATION, SUSPENSION, AND		
DISPUTE RESOLUTION.....		117
1.	Events of Defaults & Cure Periods	117
(a)	Events of default	117
(b)	Cure periods	118
2.	Remedies for Default	119
3.	Termination for Convenience	121
4.	Suspension	122
5.	Dispute Resolution	124
(a)	Overview	124
(b)	Informal dispute resolution	124
(c)	Mediation	125
(d)	Dispute resolution boards	126
(e)	Arbitration	127
Index		129