

# Index

## **ABATEMENT**

Environmental issues, **17:19**

## **ACCELERATION**

Claims by contractors, **22:73 to 22:75**

Delays in construction, constructive acceleration, **6:15**

## **ACCEPTED WORK DOCTRINE**

Privity, negligence and fraud, **5:24**

## **ACCESS TO SITE**

Claims by contractors, **22:85**

Contracts for work to be done on your premises, **13:26**

## **ACQUIESCENCE**

Consent or Approval (this index)

## **ACTIVE INTERFERENCE OR CONCEALMENT**

“No damage for delay” clauses, **6:26, 6:30**

## **ACTS OF GOD**

Claims by contractors, **22:76**

## **ADA**

Americans with Disabilities Act (this index)

## **ADMINISTRATION OF CONTRACTS**

Generally, **22:41 to 22:60**

Acquiescence in procedures and/or actions inconsistent with contractual requirements, avoidance of, **22:54**

Change orders, **22:58**

Claims management, **22:58**

Closeout of contract, **22:59**

Communication, effective, **22:49 to 22:51**

Comprehensive determination generally, **22:43 to 22:47**

## **ADMINISTRATION OF**

### **CONTRACTS—Cont’d**

Comprehensive determination —Cont’d

contract documents, **22:44**

correspondence, **22:47**

field, events in, **22:45**

submittals by contractor, **22:46**

Contract documents, **22:44**

Correspondence, **22:47, 22:53**

Disputes, avoidance of, **22:42**

Document management, **22:48, 22:56**

Drafting of contract with designer, **22:12**

Field, events in, **22:45**

Format of effective communication, **22:49 to 22:51**

Payment, requisitions for, **22:57**

Rules of contract administration, **22:60**

Submittals by contractor, **22:46**

Waivers, avoidance of, **22:52 to 22:54**

Written procedures

generally, **22:55 to 22:59**

change order and claims management, **22:58**

closeout of contract, **22:59**

document management, **22:56**

payment, requisitions for, **22:57**

## **ADMINISTRATIVE METHODS**

Americans with Disabilities Act, **24:9**

## **ADVERTISING**

Visual Artists Rights Act, **25:11**

## **AFFIRMATIVE FALSE REPRESENTATION**

Conditions at site, contractor of pre-bid inspection, **3:8**

## **AGENCY**

Agreement (form), **27:2**

**AGENCY—Cont'd**

Privity (this index)

**AIR HANDLING UNITS**

Uniform Commercial Code, design,  
testing, and supervision  
incidental to purchase of, **14:24**

**ALCOHOL ABUSE**

Contractors and suppliers, use by  
(form), **26:49**  
Contracts for work to be done on  
your premises, **13:13**

**ALLOCATION OF CONTROL**

Multiemployer construction sites,  
**12:9**

**ALLOCATION OF RISK**

Drafting of construction contracts,  
**22:34**

**ALTERATIONS TO CONTRACTS**

Changes in Contracts (this index)

**AMERICANS WITH  
DISABILITIES ACT**

Generally, **1:11, 24:1 to 24:22, App.  
24A, App. 24B**

Activities, **24:7**

Administrative methods, **24:9**

Affected parties, **24:2 to 24:4**

Applicability, **24:2 to 24:4**

Association, **24:10**

Commercial facilities, **24:3**

Common ADA errors and omissions  
in new construction and altera-  
tions, **App. 24A**

Conclusion, **24:22**

Enforcement, **24:18**

Exemptions, **24:17**

Indemnification, enforcement, **24:21**

Individuals with disabilities, **24:4**

Injury-in-fact, enforcement, **24:19**

Integrated settings, **24:8**

Places of public accommodation,  
**24:3**

Prohibition against discrimination  
generally, **24:5 to 24:10**  
activities, **24:7**  
administrative methods, **24:9**

**AMERICANS WITH  
DISABILITIES ACT—Cont'd**

Prohibition against discrimination  
—Cont'd

association, **24:10**

existing facilities, **24:12 to 24:15**

general prohibitions, **24:6 to 24:10**

integrated settings, **24:8**

new construction, **24:16**

specific prohibitions, **24:11 to  
24:15**

Resources, **App. 24B**

Standing, **24:20**

**ANNING-JOHNSON/ GROSSMAN  
STEEL FRAMEWORK**

Multiemployer construction sites,  
**12:3 to 12:14**

**ANTI-DUPLICATION PROVISION**

Resource Conservation and Recovery  
Act, **17:10**

**ANTIWAIVER PROVISION**

Changes in contracts, **4:18**

**APPARENT AGENCY**

Privity, **5:20**

**APPROVAL**

Consent or Approval (this index)

**ARBITRARY AND CAPRICIOUS  
STANDARD OF REVIEW**

Federal Arbitration Act, **23:10**

**ARBITRATION**

Generally, **1:14, 23:1 to 23:33**

Arbitration rules, **23:16, App. 23A**

Authority to decide arbitrability,  
**23:15, 23:16**

Consolidation of arbitration hearings,  
**23:21**

Contracts for work to be done on  
your premises, **13:28**

Davis-Bacon Act, **19:14**

Enforcement of valid of agreement to  
arbitrate, **23:24**

Evidence, **23:33**

Expedited arbitration of construction  
disputes, **23:31**

Federal Arbitration Act (this index)

## INDEX

### **ARBITRATION—Cont'd**

- Full faith and credit, **23:22**
- Incorporation by reference and flow to down provisions, **20:7 to 20:9**
- Incorporation by reference and flow-down provisions, **23:18**
- Mechanic's liens, waiver of right to attorneys' fees, **9:13**
- Mediation procedures, **App. 23A**
- Non-signatories, **23:32**
- Privity, **5:25, 5:26**
- Quantum meruit, **18:13**
- Res judicata, **23:23**
- Severability of agreement to arbitrate, **23:17**
- Standing to enforce arbitration agreement, **23:25**
- State arbitration acts
  - generally, **23:14 to 23:30**
  - existence of agreement to arbitrate, **23:14**
  - interralted contracts, **23:20**
  - invalid arbitration agreements, **23:30**
  - union disputes, **23:29**
  - waiver, **23:27**
  - withdrawal of consent, **23:28**
- Third party beneficiaries, **23:26**
- Union disputes, **23:29**
- Warranties, **16:25**

### **ARCHITECTS**

- Agreement (form), **26:34, 26:35**
- Changes in contracts, **4:20**
- Delays in construction, "no damage for delay" clauses, **6:15**
- Liens. Architect's Liens (this index)
- Warranties (this index)

### **ARCHITECT'S LIENS**

- Generally, **8:2 to 8:8**
- Compliance with other state laws, necessity of, **8:14**
- Construction administrative services, **8:7**
- Constructive improvement, **8:5**
- Drawings, recovery for, **8:3**
- Enhancement of property's value, **8:4**
- Prompt payment acts, **8:15**

### **ARCHITECT'S LIENS—Cont'd**

- Supervision, recovery for, **8:3, 8:6**
- Types of services giving rise to lien, **8:6, 8:8**
- Work that constitutes improvement, **8:4, 8:5**

### **ART AND ARTISTS**

- Visual Artists Rights Act (this index)

### **ASBESTOS**

- Clean Air Act, **17:2**

### **ASSIGNMENT**

- Arbitration clauses, **23:9**
- Mechanic's liens, **7:6**

### **ASSOCIATION**

- Americans with Disabilities Act, **24:10**

### **ATTORNEYS**

- Fees
  - mechanic's liens, arbitration as waiver of right to, **9:13**
  - recovery, Visual Artists Rights Act, **25:22**
- Role of corporate counsel, **22:6**

### **ATTRIBUTION**

- Visual Artists Rights Act, **25:4**

### **AUTHORITY**

- Claims by contractors, **22:103**
- Delays in construction, **6:12**

### **AUTHORSHIP**

- Contracts for work to be done on your premises, **13:19**

### **AVOIDANCE**

- Mechanic's Liens (this index)

### **BANKRUPTCY**

- Common areas of disagreement, **1:15**
- Federal Arbitration Act, **23:7**
- Mechanic's liens, service of notice, **7:19**

### **BARNS**

- Uniform Commercial Code, **14:31**

### **BASELINES**

- Management of designer, **22:18**

**BIBLIOGRAPHY**

Generally, **App. A**

**BIDS AND BIDDERS**

Generally, **1:19**

Instructions to bidders (form), **26:5**

Requirements for bidding, **1:19**

Solicitation of bids (form), **26:1**

**BONDS**

Performance and Payment Bonds  
(this index)

**BOTTLING COMPANY**

Construction services agreement  
(form), **26:11**

**BUDGETS**

Drafting of contract with designer,  
**22:10**

Management of designer, **22:22**

**BURDEN OF PROOF**

Quantum meruit, **18:5**

**CATASTROPHIC EVENTS**

Conditions at site, disclaimers, **3:15**

**CAUSATION**

Claims by contractors, **22:67, 22:104**

**CHANGES IN CONTRACTS**

Generally, **4:1 to 4:24**

Administration of contracts, **22:58**

Alteration of significant terms.

Excuse of performance under or  
alteration of significant terms of  
original contract, below

Antiwaiver provision, **4:18**

Architect, changes by, **4:20**

Broadly worded change orders, **4:4**

Cardinal changes, **4:22, 22:77**

Compensation, amount to be  
determined at later time, **4:12**

Constructive change orders, **4:14**

Contracts for work to be done on  
your premises, **13:4**

Course of conduct, waiver by owner  
of written change order through,  
**4:15**

Documentation. Proper written  
documentation, changes  
without, below

**CHANGES IN CONTRACTS**

**—Cont'd**

Drafting of construction contracts,  
**22:37**

Drafting of contract with designer,  
**22:14**

Essential term of original contract,  
modification of, **4:23**

Evidence of waiver by owner of writ-  
ten change order, **4:17**

Excuse of performance under or  
alteration of significant terms of  
original contract  
generally, **4:22 to 4:24**

“cardinal” changes resulting in  
abandonment of original  
contract, **4:22**

essential term of original contract,  
modification of, **4:23**

trade practice or custom, use to  
determine meaning of  
ambiguous term in change  
directive, **4:24**

Failure of contractor to comply with  
explicit provision for changes,  
**4:8**

Form, sample change orders, **27:19**

Government contractors, changes  
without proper written  
documentation, **4:9**

Inaction by owner as waiver of writ-  
ten change order, **4:16**

Like effect provision, requests by  
owner for extra work, **4:5**

Objection, additional work performed  
without, **4:7**

Proper written documentation,  
changes without  
generally, **4:6 to 4:12**

compensation, amount to be  
determined at later time, **4:12**

failure of contractor to comply  
with explicit provision for  
changes, **4:8**

government contractors, **4:9**

objection, additional work  
performed without, **4:7**

significant increase in scope of  
work impliedly authorizes

## INDEX

### CHANGES IN CONTRACTS

#### —Cont'd

- Proper written documentation, changes without—Cont'd
  - increase in time to complete work, **4:11**
  - unauthorized parties, execution of change order by, **4:10**
  - waiver by owner of written change owner, below
- Quantum meruit, **4:19**
- Requests by owner for extra work
  - generally, **4:2 to 4:4**
  - broadly worded change orders, **4:4**
  - like effect provision, **4:5**
  - unanticipated repairs, **4:3**
- Significant increase in scope of work impliedly authorizes increase in time to complete work, **4:11**
- Subcontractor, change orders as applied to, **4:21**
- Trade practice or custom, use to determine meaning of ambiguous term in change directive, **4:24**
- Unanticipated repairs, **4:3**
- Unauthorized parties, execution of change order by, **4:10**
- Verbal order as waiver of writing requirement, **4:13**
- Waiver by owner of written change order
  - generally, **4:13 to 4:18**
  - antiwaiver provision, **4:18**
  - constructive change orders, **4:14**
  - course of conduct, waiver through, **4:15**
  - inaction by owner as waiver, **4:16**
  - insufficient evidence of waiver, **4:17**
  - verbal order as waiver of writing requirement, **4:13**

### CHEMICAL COMPANIES

- Forms (this index)

### CIVIL RIGHTS

- Americans with Disabilities Act (this index)

### CLAIM NOTICE

- Warranties, accuracy of plans and specifications, **16:3**

### CLAIMS BY CONTRACTORS

- Generally, **22:61 to 22:150**
- Acceleration, **22:73 to 22:75**
- Access to site, denial of, **22:85**
- Acts of God, **22:76**
- Actual costs, damages, **22:119**
- Additional time, damages, **22:124**
- Administration of contracts, **22:58**
- Analysis of claims, generally, **22:126 to 22:150**
- Authority, lack of, **22:103**
- Calculation of damages, **22:109, 22:148**
- Cardinal changes, **22:77**
- Categories of damages, **22:110 to 22:117**
- Causation, **22:67, 22:104**
- Conditions of site
  - generally, **22:86 to 22:90**
  - investigation of site, **22:90**
  - notice, prompt, **22:89**
  - physical condition at site, **22:87**
  - significant difference, **22:88**
- Confirmation of work in question, **22:140**
- Context of claim, reading of provisions in, **22:138**
- Control provisions, review of, **22:137**
- Damages
  - generally, **22:63, 22:70, 22:107 to 22:125**
  - actual costs, **22:119**
  - additional time, **22:124**
  - analysis of claims, **22:129**
  - calculation of damages, **22:109, 22:148**
  - categories of damages, **22:110 to 22:117**
  - equipment costs, **22:113**
  - estimated costs, **22:120**
  - extra costs, **22:125**
  - home office overhead costs, **22:117**
  - labor costs, **22:111**
  - markups specified by contract, **22:115**

## CLAIMS BY CONTRACTORS

### —Cont'd

- Damages—Cont'd
  - material costs, **22:112**
  - modified total costs, **22:122**
  - purpose, **22:108**
  - subcontractor costs, **22:114**
  - supplemental costs, **22:116**
  - total costs, **22:121, 22:122**
  - types of calculations, **22:118 to 22:125**
- Defective specifications, **22:78**
- Defective work, **22:100**
- Defenses of owners
  - generally, **22:98 to 22:106**
  - authority, lack of, **22:103**
  - causation, lack of, **22:104**
  - change order includes all costs, **22:99**
  - defective work, **22:100**
  - delay, no damage for, **22:105**
  - designer's decision as final, **22:101**
  - procedural requirements, failure to comply with, **22:102**
  - statutes of limitation, **22:106**
- Delay
  - generally, **22:79 to 22:84**
  - analysis of delay claim, use of schedule for, **22:84**
  - common types of schedules, **22:81**
  - float, **22:83**
  - no damage for delay, **22:105**
  - preparation of CPM schedule, **22:82**
  - schedules, function of, **22:80**
- Designer's decision as final, **22:101**
- Differing conditions at site. Conditions of site, above
- Documentation, **22:68 to 22:71, 22:143 to 22:145**
- Entitlement, **22:64 to 22:66, 22:128, 22:147**
- Equipment costs, damages, **22:113**
- Estimated costs, damages, **22:120**
- Evaluation of factual position of contractor
  - generally, **22:66, 22:139 to 22:146**

## CLAIMS BY CONTRACTORS

### —Cont'd

- Evaluation of factual position of contractor—Cont'd
  - confirmation of work in question, **22:140**
  - development of conclusion, **22:146**
  - documentation of contractor, **22:143 to 22:145**
  - inspection of construction, **22:141**
  - schedules, **22:142**
- Extra costs, damages, **22:125**
- Extra work, **22:91**
- Float, delay, **22:83**
- Formal response, preparation of, **22:149**
- God, acts of, **22:76**
- Home office overhead costs, damages, **22:117**
- Identification of specific issues, **22:135**
- Impossibility or impracticability of performance, **22:95**
- Inspection of construction, **22:141**
- Instruction to accelerate, **22:75**
- Interference, **22:94**
- Investigation of conditions of site, **22:90**
- Labor costs, damages, **22:111**
- Markups specified by contract, damages, **22:115**
- Material costs, damages, **22:112**
- Modified total costs, damages, **22:122**
- Notice of differing conditions at site, **22:89**
- Objectives of claims analysis, **22:127**
- Other contractors, problems caused by, **22:96**
- Procedural requirements, compliance with, **22:102, 22:132**
- Proof, four basic requirements of
  - generally, **22:62 to 22:71**
  - damages, **22:63, 22:70**
  - direct causation, **22:67**
  - documentation, **22:68 to 22:71**
  - entitlement, **22:64 to 22:66**
  - factual basis of claim, entitlement, **22:66**

## INDEX

### CLAIMS BY CONTRACTORS

#### —Cont'd

- Proof of claims, generally, **22:61 to 22:97**
- Requirements of contract, analysis of, **22:131 to 22:138**
- Review of submission by contractor, **22:130**
- Schedules, **22:80, 22:142**
- Specifications, defective, **22:78**
- Statutes of limitation, **22:106**
- Subcontractor costs, damages, **22:114**
- Substantive requirements of contract, analysis of, **22:133**
- Substitution, improper denial of, **22:92**
- Supplemental costs, damages, **22:116**
- Techniques of contractual analysis
  - generally, **22:134 to 22:138**
  - context of claim, reading of provisions in, **22:138**
  - control provisions, review of, **22:137**
  - identification of specific issues, **22:135**
  - thorough examination of contract, **22:136**
- Thorough examination of contract, **22:136**
- Total costs, damages, **22:121, 22:122**
- Utilities, inadequacy of, **22:93**
- Visual Artists Rights Act, **25:5**
- Waiver (forms), **26:36 to 26:38**
- Warranties, claim notice, **16:3**
- Wrongful termination, **22:97**

### CLEAN AIR ACT

- Generally, **17:2 to 17:5**

### CLEAN WATER ACT

- Generally, **17:11 to 17:14**

### CLOSEOUT OF CONTRACT

- Generally, **22:59**

### COMMENCEMENT OF ACTION

- Mechanic's liens, failure to file notice of, **7:29**

### COMMENCEMENT OF WORK

- Delays in construction, **6:3**

### COMMERCIAL LIABILITY POLICIES

- Pollution exclusion clauses, **17:22**

### COMMON AREAS OF DISAGREEMENT

- Introduction, **1:2**

### COMPONENT PARTS

- Doctrine, warranties, **16:21**

### COMPREHENSIVE DETERMINATION

- Administration of Contracts (this index)

### COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

- Generally, **17:6**

### CONDITION OF MATERIALS

- Common areas of disagreement, **1:13**

### CONDITIONS

- Contingent Payments (this index)
- Forms (this index)
- Materials, condition of, common areas of disagreement, **1:13**
- Site conditions. Conditions at Site (this index)

### CONDITIONS AT SITE

- Generally, **3:1 to 3:16**
- Affirmative false representation by contractor of pre-bid inspection, **3:8**
- Breach, accrual of cause of action for, **3:9**
- BroadswEEPing and general disclaimers, **3:11**
- Catastrophic events, disclaimers, **3:15**
- Changes to design or performance specifications, disclaimers, **3:16**
- Claims by Contractors (this index)
- Contract documents, misrepresentation of site conditions, **3:2**
- Disclaimers
  - generally, **3:11 to 3:16**



**CONDITIONS AT SITE—Cont'd**

- Disclaimers—Cont'd
  - additional claims, jurisdiction over additional claims made under government contracts, **3:14**
  - broadswEEPing and general disclaimers, **3:11**
  - catastrophic events, **3:15**
  - changes to design or performance specifications, **3:16**
  - government contracts, jurisdiction over additional claims, **3:14**
  - jurisdiction over additional claims made under government contracts, **3:14**
  - Type I conditions, contract with affirmative representations of conditions, **3:13**
  - warning that field verification required or drawings not to scale, **3:12**
- Fraud. Misrepresentation of site conditions, below
- General and broadswEEPing disclaimers, **3:11**
- Government contracts, jurisdiction over additional claims, **3:14**
- Invasive testing by contractor, **3:5**
- Investigation by contractor
  - generally, **3:5 to 3:8**
  - affirmative false representation by contractor of pre-bid inspection, **3:8**
  - degree and kind of knowledge expected of contractor, **3:7**
  - invasive testing, **3:5**
  - unduly restricted investigation, **3:6**
- Jurisdiction over additional claims made under government contracts, **3:14**
- Knowledge, degree and kind, **3:7**
- Misrepresentation of site conditions
  - generally, **3:2 to 3:4**
  - contract documents, **3:2**
  - proffered sample of expected conditions, **3:3**
  - reliance by contractor, necessity of, **3:4**
- Parol evidence, **3:10**

**CONDITIONS AT SITE—Cont'd**

- Proffered sample of expected conditions, misrepresentation of site conditions, **3:3**
- Reliance by contractor, misrepresentation of site conditions, **3:4**
- Unanticipated Site Conditions (this index)
- Unduly restricted investigation by contractor, **3:6**
- Warning that field verification required or drawings not to scale, **3:12**

**CONFIDENTIAL INFORMATION**

- Agreement (form), **26:22, 26:51, 26:53**
- Contracts for work to be done on your premises, **13:22**

**CONSENT OR APPROVAL**

- Administration of contracts, avoidance of acquiescence in procedures and/or actions inconsistent with contractual requirements, **22:54**
- Joint checks, **21:2**

**CONSEQUENTIAL DAMAGES**

- Warranties, **16:28**

**CONSERVATION**

- Environmental Issues (this index)

**CONSOLIDATION**

- Arbitration hearings, **23:21**

**CONSTITUTIONAL LAW**

- Quantum meruit, issue preclusion, **18:21**

**CONSTRUCTION**

**ADMINISTRATIVE SERVICES**

- Architect's liens, **8:7**

**CONSTRUCTION MANAGERS**

- Delays in construction, "no damage for delay" clauses, **6:23**

**CONSTRUCTION OF PROJECT**

- Generally, **22:1 to 22:6**
- Attorney for owner, role of, **22:6**
- Conclusion, **22:150**



## INDEX

### CONSTRUCTION OF PROJECT

#### —Cont'd

- Control by owner, **22:4**
- Criteria for success, **22:3**
- Standard documents for owner, value in development of, **22:5**

### CONSTRUCTIVE ACCELERATION

- Delays in construction, **6:15**

### CONSTRUCTIVE CHANGES IN CONTRACTS

- Generally, **4:14**

### CONSTRUCTIVE IMPROVEMENTS

- Architect's liens, **8:5**

### CONSULTING AGREEMENTS

- Form, **26:21**

### CONSUMER PRODUCTS COMPANY

- Safety guidelines (form), **26:47**

### CONTINGENT PAYMENTS

- Generally, **15:1 to 15:29**
- Ambiguous contract language, **15:9, 15:16 to 15:19**
- Clarity of contractual language, **15:6 to 15:8**
- "Conditioned," use of, **15:17**
- Conditions precedent
  - generally, **15:3 to 15:10, 15:20 to 15:23**
  - ambiguous contractual language, jury issue, **15:9**
  - clarity of contractual language, **15:6 to 15:8**
  - enforcement of clauses, **15:20 to 15:23**
  - intent of parties, **15:5 to 15:10**
  - majority view, **15:20 to 15:23**
  - minority view, generally, **15:3 to 15:10**
  - partial payment, receipt by general contractor, **15:23**
  - partial payment made to subcontractor, **15:10**
  - reliance by subcontractor on owner's credit, **15:21**

### CONTINGENT PAYMENTS

#### —Cont'd

- Conditions precedent—Cont'd
  - specific reference to nonpayment by owner, **15:22**
  - subcontractor, partial payment, **15:10**
- Enforcement of clauses, **15:20 to 15:23**
- Gross mistake of fact by owner, **15:15**
- Insolvency of owner, **15:12, 15:13**
- Intent of parties, **15:5 to 15:10, 15:16 to 15:19**
- Partial payment, receipt by general contractor, **15:23**
- Partial payment made to subcontractor, **15:10**
- Performance and payment bonds, surety's obligations after principal's release, **10:27**
- Prompt payment acts, **15:29**
- Public policy, **15:14**
- Questions of law or fact, intent and ambiguity, **15:9, 15:16**
- Reasonable time for payment
  - generally, **15:11 to 15:19**
  - "conditioned," use of, **15:17**
  - gross mistake of fact by owner, **15:15**
  - insolvency of owner, **15:12, 15:13**
  - intent and ambiguity, **15:16 to 15:19**
  - majority view, generally, **15:11 to 15:19**
  - public policy, **15:14**
  - questions of law, intent and ambiguity as, **15:16**
  - shifting of risk of insolvency of owner, **15:12**
- Reliance by subcontractor on owner's credit, **15:21**
- Shifting of risk of insolvency of owner, **15:12**
- Specific reference to nonpayment by owner, **15:22**
- Subcontractor
  - entitlement to payment, **15:25**
  - partial payment, **15:10**

**CONTINGENT PAYMENTS**

**—Cont'd**

- Surety, obligation of
  - generally, **15:24 to 15:28**
  - pay-when-paid clause, enforcement, **15:28**
  - performance and payment bonds, **10:27**
  - subcontractor, entitlement to payment, **15:25, 15:27**
  - validity of pay-when-paid clause in contractor/ subcontractor contract, **15:26**

**CONTRACT FORMATION ISSUES**

- Uniform Commercial Code, **14:3**

**CONTRACT LANGUAGE,  
AMBIGUOUS**

- Contingent payments, **15:9, 15:16 to 15:19**

**CONTRACT MANUAL  
PROVISIONS**

- Incorporation by reference and flow-down provisions, **20:6**

**CONTRACTS FOR WORK TO BE  
DONE ON YOUR PREMISES**

- Generally, **13:1 to 13:28**
- Access to site, **13:26**
- Alcohol abuse by employees of vendor, **13:13**
- Arbitration, **13:28**
- Authorship, works of, **13:19**
- Changes in contracts, **13:4**
- Checklist of issues to consider when entering into, **App. 13A**
- Confidential information, **13:22**
- Delegation of duty, **13:29**
- Disruption of work, **13:5**
- Drug abuse by employees of vendor, **13:13**
- Employees of vendor, behavior of, **13:11 to 13:13**
- Environmental concerns, **13:8**
- Equipment, **13:25**
- Hazardous materials, **13:9**
- Health and safety, **13:7**
- Intellectual property, **13:19**
- Legal differences, **13:2**

**CONTRACTS FOR WORK TO BE  
DONE ON YOUR PREMISES**

**—Cont'd**

- Payment, **13:6**
- Practical difference from “sale of goods,” **13:3 to 13:26**
- Property, **13:25**
- Public liability, **13:10**
- Qualifications of personnel, **13:23**
- Relationship of parties, **13:21**
- Resources, use of, **13:20**
- Safety and health, **13:7**
- Scope of work, **13:4**
- Security, **13:24**
- Sexual harassment by employees of vendor, **13:12**
- Site access, **13:26**
- Subcontracts, **13:16**
- Supplementary terms and conditions, **13:27**
- Taxes, **13:18**
- Termination, **13:14**
- Time of completion, **13:15**
- Use of resources and utilities, **13:20**
- Utilities, use of, **13:20**
- Warranties, **13:17**

**CONTRACTS WITH OWNER**

- Privity, third party beneficiaries, **5:16**

**CONTRACTUAL LANGUAGE,  
CLARITY OF**

- Contingent payments, **15:6 to 15:8**

**CONTROL**

- Multiemployer Construction Sites (this index)
- Owner, control by, **22:4**

**CONTROLLED SUBSTANCES**

- Alcohol Abuse (this index)
- Contractors and suppliers, use by (form), **26:49**
- Contracts for work to be done on your premises, **13:13**

**COORDINATION OF WORK**

- Delays in construction, causation by owner, **6:10**

## INDEX

### CO-PRIME CONTRACTORS

Privity, third party beneficiaries, **5:16**

### COPYRIGHT CLAIMS

Liens, **8:17**

### CORRESPONDENCE

Administration of contracts, **22:47, 22:53**

### COST-PLUS CONSTRUCTION AGREEMENTS

Forms, **26:15, 26:16**

### COUNSEL

Attorneys (this index)

### COURSE OF CONDUCT

Changes in contracts, waiver by owner of written change order, **4:15**

### CRAFT OR JURISDICTIONAL RULES

Multiemployer construction sites, **12:13**

### DAMAGES

Claims by Contractors (this index)  
Delays in construction, authority to resolve delay damages disputes, **6:12**  
Joint checks, **21:14**  
“No damage for delay” clauses.  
Delays in Construction (this index)  
Warranties, recovery of consequential, **16:28**

### DATE

Time and Date (this index)

### DAVIS-BACON ACT

Generally, **19:1 to 19:23**  
Applicability of Act, **19:2 to 19:7**  
Arbitration, **19:14**  
Conclusion, **19:23**  
“Construction” contracts, **19:3**  
Criticism of Act, **19:22**  
Davis-Bacon and Related Acts (DBRA), U.S. Department of Labor, **App. 19A**

### DAVIS-BACON ACT—Cont’d

Davis-Bacon Wage Survey Process, U.S. Department of Labor, **App. 19B**

Debarment, **19:17**

Fair Labor Standards Act, **19:20**

“Fringe benefits,” **19:7**

“Laborers,” **19:6**

Liability on contract, **19:15**

“Mechanics,” **19:6**

Option clauses, contracts with, **19:12**

Penalties

generally, **19:15 to 19:21**

debarment, **19:17**

Fair Labor Standards Act, **19:20**

False Claims Act, violation of, **19:18**

liability on contract, withholding and challenges to withholding, **19:15**

private right of action, **19:19**

termination of contract, **19:16**

unjust enrichment, **19:21**

Private right of action, **19:19**

“Public buildings,” **19:4**

“Public works,” **19:4**

Required provisions, **19:8 to 19:13**

Secretary’s authority regarding wage determinations, **19:11**

Termination of contract, **19:16**

Unjust enrichment, **19:21**

Wages, minimum within DOL guidelines

generally, **19:9 to 19:12**

option clauses, contracts with, **19:12**

process for wage determinations, **19:10**

secretary’s authority regarding wage determinations, **19:11**

“Wages,” **19:7**

Weekly payments to employees, **19:13**

Withholding and challenges to withholding, **19:15**

“Within the United States,” **19:5**

Work “on the site,” **19:3**

## **DEBARMENT**

Davis-Bacon Act, **19:17**

## **DECEIT**

Fraud and Misrepresentation (this index)

## **DEFECTIVE PLANS AND SPECIFICATIONS**

Claims by contractors, **22:78**

Delays in construction, causation by owner, **6:11**

## **DEFECTIVE WORK**

Claims by contractors, **22:100**

Performance and payment bonds, liability of surety, **10:8 to 10:10**

## **DEFENSES**

Claims by Contractors (this index)

Mechanic's Liens (this index)

Multiemployer Construction Sites (this index)

Warranties, accuracy of plans and specifications, **16:6**

## **DEHUMIDIFICATION SYSTEMS**

Uniform Commercial Code, **14:23**

## **DELAYS IN CONSTRUCTION**

Generally, **6:1 to 6:44**

Active interference or concealment, "no damage for delay" clauses, **6:26, 6:30**

Architects, "no damage for delay" clauses, **6:22**

Authority to resolve delay damages disputes, **6:12**

Availability of site, owner-caused delays, **6:9**

Claims by Contractors (this index)

Commencement of work, time for reasonable time requirement, **6:3**  
"time is of the essence" clauses, **6:3**

Construction managers, "no damage for delay" clauses, **6:23**

Constructive acceleration, **6:15**

Contemplation of parties, delays not in, **6:29**

## **DELAYS IN CONSTRUCTION**

### **—Cont'd**

Contractor, rights and responsibilities of

generally, **6:5 to 6:8**

excusable delays, recovery for, **6:5**

liquidated damages, recovery of, **6:7**

subcontractors, liability to, **6:6**

surety of contractor, recovery by owner of damages from, **6:8**

Coordination of work of prime contractors, owner-caused delays, **6:10**

Damages, authority to resolve delay damages disputes, **6:12**

Defective plans and specifications, owner-caused delays, **6:11**

Dispute resolution, authority to resolve delay damages disputes, **6:12**

Disruption, "no damage for delay" clauses, **6:32**

Drafting of construction contracts, **22:38**

Eichlay formula. Government contracts, below

Engineers, "no damage for delay" clauses, **6:22**

Excusable delays, recovery for, **6:5**

Force majeure clause, **6:33**

Fraud, "no damage for delay" clauses, **6:30**

Fundamental obligation, breach of, **6:28**

Government contracts

generally, **6:34 to 6:39**

Eichlay formula

federal contracts, **6:39**

state court, **6:41**

federal contracts, Eichlay formula in, **6:39**

immunity, sovereign, **6:36**

McMullan presumption, **6:37**

Miller Act, **6:35**

sovereign immunity, **6:36**

state court, Eichlay formula in, **6:41**

state statutes, **6:43**

## INDEX

### DELAYS IN CONSTRUCTION

#### —Cont'd

- Government contracts—Cont'd
  - suspension of work clause, **6:42**
  - unabsorbed home office overhead
    - generally, **6:38 to 6:40**
    - Eichlay formula in federal contracts, **6:39**
    - Eichlay formula in state court, **6:41**
    - federal contracts, Eichlay formula in, **6:39**
    - stand-by, **6:40**
    - state court, Eichlay formula in, **6:41**
- Gross negligence, “no damage for delay” clauses, **6:27**
- Hindrance, **6:31**
- Hindrance, “no damage for delay” clauses, **6:31**
- Immunity, sovereign, **6:36**
- Incorporation by reference and flow-down provisions, damages for delay provisions, **20:4**
- Interference, willful and deliberate, **6:26**
- Liquidated damages, **6:7, 6:44**
- McMullan presumption, government contracts, **6:37**
- Miller Act, government contracts, **6:35**
- “No damage for delay” clauses
  - generally, **6:16 to 6:20**
  - architects, use of clause to protect other parties, **6:22**
  - construction managers, use of clause to protect other parties, **6:23**
  - contemplation of parties, delays not in, **6:29**
  - disruption, **6:32**
  - engineers, use of clause to protect other parties, **6:22**
  - exceptions, **6:25 to 6:33**
  - force majeure clause, **6:33**
  - fraud or active concealment, **6:30**
  - fundamental obligation, breach of, **6:28**
  - gross negligence, **6:27**

### DELAYS IN CONSTRUCTION

#### —Cont'd

- “No damage for delay” clauses
  - Cont'd
    - hindrance, **6:31**
    - other contractors, use of clause to protect, **6:24**
    - parties at fault, **6:19**
    - strict construction, **6:18**
    - use of clause to protect other parties, **6:21 to 6:24**
    - validity of clauses, **6:17 to 6:20**
    - willful and deliberate or “active” interference, **6:26**
- Owner to caused delays
  - generally, **6:9 to 6:11**
- Owner-caused delays
  - availability of site and coordination of work of prime contractors, **6:10**
  - defective plans and specifications, **6:11**
- Parties at fault, “no damage for delay” clauses, **6:19**
- Reasonable time requirement
  - generally, **6:2**
  - commencement of work, time for, **6:3**
  - time for commencement of work, **6:3**
- Release, waiver of delay damages, **6:14**
- Resolution, authority to resolve delay damages disputes, **6:12**
- Sovereign immunity, government contracts, **6:36**
- State court, Eichlay formula in, **6:41**
- State statutes, government contracts, **6:43**
- Strict construction, “no damage for delay” clauses, **6:18**
- Subcontractors, liability to, **6:6**
- Substantial completion, **6:4**
- Surety of contractor, recovery by owner of damages from, **6:8**
- Suspension of work clause, government contracts, **6:42**
- Time for commencement of work, **6:3**

**DELAYS IN CONSTRUCTION**

**—Cont'd**

“Time is of the essence” clauses  
generally, **6:2**  
commencement of work, time for,  
**6:3**  
Unabsorbed home office overhead.  
Government contracts, above  
Waiver of delay damages, **6:13**

**DELEGATION OF DUTY**

Contracts for work to be done on  
your premises, **13:29**

**DELIVERABLES**

Designer, management of, **22:20**

**DESIGNER, MANAGEMENT OF**

Generally, **22:17 to 22:31**  
Baselines, establishment of, **22:18**  
Budget, **22:22**  
Deliverables, **22:20**  
Document discussions and decisions,  
**22:28**  
Failure to comply with requirements  
of agreement, **22:30**  
Gaps, three, **22:31**  
Monitoring performance by designer,  
**22:26 to 22:29**  
generally, **22:24 to 22:30**  
document discussions and deci-  
sions, **22:28**  
failure to comply with require-  
ments of agreement, **22:30**  
items to monitor, **22:25**  
method of monitoring, **22:26 to**  
**22:29**  
regular meetings, **22:27**  
reports, requirement and utilization  
of, **22:29**  
Program, **22:19**  
Regular meetings, **22:27**  
Reports, requirement and utilization  
of  
generally, **22:29**  
progress reports, **22:23**  
Schedules, **22:21**

**DISABLED PERSONS**

Americans with Disabilities Act (this  
index)

**DISCLAIMERS**

Conditions at Site (this index)  
Unanticipated Site Conditions (this  
index)  
Uniform Commercial Code, warran-  
ties, **14:11, 14:40 to 14:43**  
Warranties, **16:29**

**DISCOVERY**

Warranties, time for bringing action,  
**16:23**

**DISCRIMINATION**

Americans with Disabilities Act (this  
index)

**DISPUTE RESOLUTION**

Delays in construction, **6:12**

**DISRUPTION OF WORK**

Contracts for work to be done on  
your premises, **13:5**  
Delays in construction, “no damage  
for delay” clauses, **6:32**

**DOCUMENTATION**

Administration of contracts, **22:44,**  
**22:48, 22:56**  
Changes in Contracts (this index)  
Claims by contractors, **22:68 to**  
**22:71, 22:143 to 22:145**  
Conditions at site, misrepresentation  
of site conditions, **3:2**  
Management of designer, **22:28**

**DRAFTING OF CONSTRUCTION  
CONTRACTS**

Generally, **22:32 to 22:40**  
Allocation of risk, **22:34**  
Change orders, **22:37**  
Coordination with design agreement,  
**22:33**  
Delay, damages for, **22:38**  
Indemnification, **22:39**  
Schedules, **22:36**  
Termination, **22:40**

**DRAFTING OF CONTRACT WITH  
DESIGNER**

Generally, **22:7 to 22:16**  
Additional services, **22:15**  
Administration of schedule, **22:12**

## INDEX

### **DRAFTING OF CONTRACT WITH DESIGNER—Cont'd**

- Analysis of claims, **22:14**
- Budget of owner, designing to, **22:10**
- Change orders, review of, **22:14**
- Deliverables required for management, **22:16**
- Inspection of construction, **22:11**
- Management of construction, **22:8**
- Payment requisitions, review of, **22:13**
- Program of owner, designing to, **22:9**
- Reimbursable expenses, **22:15**
- Review of requisitions for payment, **22:13**
- Schedule administration, **22:12**

### **DRUGS**

- Controlled Substances (this index)

### **ECONOMIC LOSS DOCTRINE**

- Privity, **5:32**

### **EDGAR DATABASE**

- Forms, **27:1 to 27:17, App. C**

### **EICHLAY FORMULA**

- Delays in construction, **6:39, 6:41**

### **ELECTRICAL SERVICES**

- Form, **26:58**

### **ELECTRICAL SUBSTATIONS**

- UCC, tests for determining whether Article 2 applies, **14:29**

### **ELECTRONIC CONTRACTING**

- Generally, **1:17**
- Internet, **1:17**

### **ENDANGERED SPECIES ACT**

- Generally, **17:15**

### **ENFORCEMENT**

- Americans with Disabilities Act, **24:18**
- Arbitration agreements, **23:24, 23:25**
- Contingent payment clauses, **15:20 to 15:23**
- Incorporation by reference clauses, **20:2**
- Surety, obligation of. pay-when-paid clause, **15:28**

### **ENFORCEMENT—Cont'd**

- Visual Artists Rights Act, **25:5**

### **ENGINEERS**

- Agreement (form), **27:3**
- Contracts (forms), **26:31 to 26:33, 26:35, 27:7**
- Delays in construction, “no damage for delay” clauses, **6:22**
- Liens. Engineer’s Liens (this index)
- Warranties (this index)

### **ENGINEER’S LIENS**

- Generally, **8:10 to 8:13**
- Compliance with other state laws, necessity of, **8:14**
- Knowledge of owner of improvement, **8:11**
- Notice to third parties, **8:12**
- Preliminary site work, recovery for, **8:10**
- Time to file lien, **8:13**

### **ENVIRONMENTAL ISSUES**

- Generally, **1:12, 17:1 to 17:23, App. 17A**
- Abatement work, **17:19**
- Anti-duplication provision, Resource Conservation and Recovery Act, **17:10**
- Asbestos, Clean Air Act, **17:2**
- Checklist of issues, **App. 17A**
- Clean Air Act, **17:2 to 17:5**
- Clean Water Act, **17:11 to 17:14**
- Commercial liability insurance pollution exclusion clauses, **17:22**
- Comprehensive Environmental Response, Compensation, and Liability Act, **17:6**
- Conclusion, **17:23**
- Contracts for work to be done on your premises, **13:8**
- Endangered Species Act, **17:15**
- Indemnity agreement (form), **27:13**
- Indoor air pollution, Clean Air Act, **17:5**
- Lead-based paint, **17:18**
- Multiemployer worksites, **17:20**
- National Environmental Policy Act, **17:16**



**ENVIRONMENTAL ISSUES**

**—Cont'd**

- Negligent exposure to hazardous materials, **17:21**
- New Source Review, Clean Air Act, **17:3**
- NPDES, Clean Water Act, **17:12**
- Paint, lead-based, **17:18**
- Permits, Clean Air Act, **17:4**
- Pollution exclusion clauses, **17:22**
- Protection rules for contractors (form), **26:44**
- Regulated activities, Clean Water Act, **17:14**
- Resource Conservation and Recovery Act, **17:7 to 17:10, 17:10**
- State laws, **17:17**
- Underground storage tanks, Resource Conservation and Recovery Act, **17:9**
- Waste, Resource Conservation and Recovery Act, **17:8**
- Wetlands, Clean Water Act, **17:13**

**EQUIPMENT**

- Claims by contractors, damages, **22:113**
- Contracts for work to be done on your premises, **13:25**
- Loan agreement (form), **26:57, 26:59**
- Sale and engineering contract (form), **26:32**

**EQUITABLE SUBORDINATION**

- Performance and payment bonds, surety's right, **10:39**

**ESTIMATED COSTS**

- Claims by contractors, damages, **22:120**

**ESTOPPEL**

- Joint checks, **21:13**

**EVIDENCE**

- Arbitration, **23:33**
- Quantum meruit, burden of proof, **18:5**
- Questions of Law or Fact (this index)
- Waiver by changes in contracts, **4:17**

**EXCULPATORY CLAUSES**

- Unanticipated Site Conditions (this index)

**EXCUSE OF PERFORMANCE**

- Changes in Contracts (this index)

**EXEMPTIONS**

- Americans with Disabilities Act, **24:17**

**EXPEDITED ARBITRATION**

- Arbitration, **23:31**

**EXTRA WORK**

- Claims by contractors, **22:91**
- Unanticipated site conditions, **2:6**

**FAILURE TO DISCLOSE**

- Fraud and Misrepresentation (this index)

**FAILURE TO FILE NOTICE OF COMMENCEMENT OF ACTION**

- Mechanic's liens, **7:29**

**FAIR LABOR STANDARDS ACT**

- Davis-Bacon Act, **19:20**

**FAST-TRACK APPROACH**

- Generally, **1:22**

**FEDERAL ARBITRATION ACT**

- Generally, **23:2 to 23:13**
- Arbitrary and capricious standard of review, **23:10**
- Assignment of arbitration clause, **23:9**
- Bankruptcy, **23:7**
- Commerce, involving transactions, **23:3**
- Conflict between state and federal law, **23:6**
- Incorporation by reference, **23:8**
- Interstate transactions involving commerce, **23:4**
- "Involving commerce," interstate transactions, **23:4**
- Post-award proceedings, **23:13**
- Severability of agreement to arbitrate, **23:5**
- Vacating awards, **23:12**

## INDEX

### FEDERAL ARBITRATION ACT

#### —Cont'd

Waiver of right to compel arbitration,  
**23:11**

### FEDERAL CONTRACTS

Arbitration. Federal Arbitration Act  
(this index)

Delays in Construction (this index)

Incorporation by reference and flow-  
down provisions, federal dispute  
resolution procedures, **20:8**

Multiemployer construction sites,  
**12:15**

Performance and payment bonds,  
**10:2**

Unanticipated site conditions,  
exculpatory and disclaimer  
clauses, **2:9**

### FEES

Attorneys' fees, recovery, Visual Art-  
ists Rights Act, **25:22**

Manufacturing company, cost-plus-  
fixed-fee construction agree-  
ments, **26:16**

Mechanic's Liens (this index)

### FIELD SERVICE AGREEMENTS

Form, **26:55**

### FILING

Engineer's liens, **8:13**

Mechanic's Liens (this index)

Performance and payment bonds,  
time for filing claim, **10:32**

### FIRE ALARM SYSTEMS

Uniform Commercial Code, **14:35**

### FITNESS FOR PARTICULAR PURPOSE

Implied warranties, **14:9, 14:45 to  
14:49, 16:20**

### FLOAT

Claims by contractors, **22:83**

### FLOW-DOWN PROVISIONS

Incorporation by Reference and  
Flow-Down Provisions (this  
index)

### FORCE MAJEURE CLAUSE

Delays in construction, **6:33**

### FORMS

Generally, **27:1 to 27:17**

Agency agreement, **27:2**

Alcohol, use by contractors and sup-  
pliers, **26:49**

Annual contractor services agree-  
ment, **26:14**

Architectural agreement, **26:34,  
26:35**

Bid solicitation, **26:1**

Bidders, instructions to, **26:5**

Blanket contract for miscellaneous  
construction, **26:13**

Bonds

payment bond, **26:41**

performance and payment bond,  
**26:43**

performance bond, **26:42**

Bottling company, construction ser-  
vices agreement, **26:11**

Change Order Form, **27:19**

Checklist of drafting terms and  
conditions, **26:60**

Chemical company

cost-plus construction agreements,  
**26:15**

lump sum construction contract,  
**26:17**

release of supplier, **26:39**

Conditions

architectural or engineering ser-  
vices, contract for, **26:35**

equipment rental, **26:59**

independent contractor's agree-  
ments, **26:27**

supervisory services, **26:56**

Confidentiality agreement, **26:22,  
26:51, 26:53**

Construction agreements, **26:7 et  
seq., 27:1, 27:2**

Construction contract, **27:5**

Construction management services  
agreement, **27:17**

Construction manager and contractor,  
contract between, **26:29**

**FORMS—Cont'd**

- Consulting agreement for construction services, **26:21**
- Consumer products company, safety guidelines, **26:47**
- Contractor and owner form, **26:10**
- Contractor and subcontractor waivers and releases, **27:18**
- Controlled substances, use by contractors and suppliers, **26:49**
- Cost-plus construction agreements, **26:15, 26:16**
- Development agreement, **27:12**
- Development services agreement, **27:12**
- EDGAR Database, forms from, **27:1 to 27:17, App. C**
- Electrical services, **26:58**
- Engineering, procurement and construction agreement, **27:3**
- Engineering contracts, **26:31 to 26:33, 26:35, 27:7**
- Engineering services, equipment sale, and construction agreement, **26:33**
- Environmental indemnity agreement, **27:13**
- Environmental protection rules for contractors, **26:44**
- Equipment loan agreement, **26:57, 26:59**
- Equipment sale and engineering contract, **26:32**
- Field service agreement, **26:55**
- General requirements for construction, **26:19**
- General rules and procedures, **26:44, 26:45**
- General terms and conditions for construction, **26:20**
- Health protection rules for contractors, **26:44**
- Improvement construction agreement, **27:17**
- Independent contractor's agreements, **26:26, 26:27**
- Instructions to bidders, **26:5**
- Insurance agreement, **26:50**

**FORMS—Cont'd**

- Inventions and secrecy agreement, **26:52**
- Labor, contract for, **26:54**
- Landlord and tenant—work letter, **27:6**
- Letter of credit, **27:14**
- Liens. Waiver, below
- Limited scope, constructions projects of, **26:30**
- Line installation agreement, **27:16**
- Loan of equipment, **26:57, 26:59**
- Lump sum construction contracts, **26:17, 26:18**
- Lump sum contract proposal, **26:6**
- Management of construction, **27:1, 27:2**
- Manufacturing company
  - blanket contract for miscellaneous construction, **26:13**
  - cost-plus-fixed-fee construction agreements, **26:16**
- Master construction agreement, **27:11**
- Master construction and term loan agreement, **27:4**
- Materials, contract for, **26:54**
- Necessary precautions checklist, **26:46**
- Performance and payment bonds, **26:41 to 26:43**
- Plumbing services, **26:58**
- Precautions checklist, **26:46**
- Premises of owner or buyer
  - purchase orders, supplementary terms and conditions for, **26:23**
  - supplementary terms and conditions for work, **26:25**
  - terms and conditions for work, **26:24**
- Prequalification questionnaire, **26:4**
- Procurement agreement, **27:7**
- Proposal for contract, **26:2, 26:6**
- Purchase orders, supplementary terms and conditions for, **26:23**
- Qualification of contractor, **26:3, 26:4**
- Release of contractor, **26:40**
- Release of supplier, **26:39**

## INDEX

### **FORMS—Cont’d**

- Safety
  - checklist, **26:48**
  - guidelines, **26:47**
  - protection rules for contractors, **26:44**
- Secrecy and inventions agreement, **26:52**
- SEC’s EDGAR Database, forms from, **27:1 to 27:17, App. C**
- Selected terms and conditions, **26:61**
- Service organizations of company, general rules and procedures expected of, **26:45**
- Small construction contract, **26:9**
- Solicitation of bids, **26:1**
- Special services agreement, **26:8**
- Subcontractor and contractor/ builder, agreement between, **26:28**
- Supervision, contract for, **26:54**
- Supervisory services conditions, **26:56**
- Supplementary terms and conditions for purchase orders, **26:23**
- Supplier, release of, **26:39**
- Time and materials form, **26:12**
- Utility company
  - general requirements for construction, **26:19**
  - general terms and conditions for construction, **26:20**
- Waiver
  - liens, generally, **26:38, 27:15**
  - liens and claims, **26:37**
  - mechanic’s and/or materialmen’s liens, **26:36**

### **FORUM SELECTION CLAUSES**

- Common areas of disagreement, **1:10**
- Incorporation by reference and flow-down provisions, **20:10**

### **FRAUD AND MISREPRESENTATION**

- Conditions at Site (this index)
- Mechanic’s liens, procurement of waiver, **9:16**
- “No damage for delay” clauses, **6:30**
- Privity (this index)

### **FRAUD AND MISREPRESENTATION**

#### **—Cont’d**

- Unanticipated Site Conditions (this index)

### **FRAUDS, STATUTE OF**

- Uniform Commercial Code, **14:13**

### **“FRINGE BENEFITS”**

- Davis-Bacon Act, **19:7**

### **FRUSTRATION OF PURPOSE DOCTRINE**

- Performance and payment bonds, liability of surety, **10:10**

### **FULL FAITH AND CREDIT**

- Arbitration, **23:22**

### **FUNCTIONAL ART**

- Visual Artists Rights Act, exclusions, **25:12**

### **GOD, ACTS OF**

- Claims by contractors, **22:76**

### **GOOD FAITH**

- Performance and payment bonds, **10:23**

### **GOODS**

- Uniform Commercial Code (this index)

### **GOVERNMENT CONTRACTORS**

- Changes without proper written documentation, **4:9**

### **GOVERNMENT CONTRACTS**

- Generally, **1:18**
- Conditions at site, disclaimers, **3:14**
- Delays in Construction (this index)

### **GRANITE PROCESSING**

- UCC, tests for determining whether Article 2 applies, **14:28**

### **GROSS MISTAKES OF FACT**

- Contingent payments, **15:15**

### **GROSS NEGLIGENCE**

- “No damage for delay” clauses, **6:27**

**GUARANTIES**

Warranties, **16:30**

**HANDICAPPED PERSONS**

Americans with Disabilities Act (this index)

**HAZARD COMMUNICATION  
RULE**

Multiemployer construction sites,  
**12:25**

**HAZARDOUS MATERIALS**

Contracts for work to be done on  
your premises, **13:9**  
Negligent exposure, **17:21**

**HEALTH**

Safety and Liability (this index)

**HINDRANCE**

“No damage for delay” clauses, **6:31**

**HOME OFFICE OVERHEAD**

Claims by contractors, damages,  
**22:117**  
Delays in Construction (this index)

**IMMUNITY**

Delays in construction, **6:36**  
Visual Artists Rights Act, **25:19**

**IMPLIED CONTRACTS**

Privity (this index)  
Quantum meruit, **18:3**

**IMPLIED WARRANTIES**

Warranties (this index)

**IMPOSSIBILITY OR  
IMPRACTICABILITY OF  
PERFORMANCE**

Claims by contractors, **22:95**

**INACTION**

Changes in contracts, waiver of writ-  
ten change order, **4:16**

**INCORPORATION BY  
REFERENCE AND FLOW TO  
DOWN PROVISIONS**

Generally, **20:1 to 20:10**  
Dispute resolution provisions, **20:7 to  
20:9**

**INCORPORATION BY  
REFERENCE AND  
FLOW-DOWN PROVISIONS**

Arbitration, **23:19**  
Contract manual provisions, **20:6**  
Damages for delay provisions, **20:4**  
Federal Arbitration Act, **23:8**  
Federal dispute resolution  
procedures, **20:8**  
Forum selection clauses, **20:10**  
General contract arbitration clauses,  
**20:9**  
Indemnity provisions, **20:5**

**INCORPORATION BY  
REFERENCE CLAUSES**

Enforcement, **20:2**

**INDEMNITY AND  
INDEMNIFICATION**

Americans with Disabilities Act,  
**24:21**  
Bonds. Performance and Payment  
Bonds (this index)  
Drafting of construction contracts,  
**22:39**  
Environmental indemnity agreement  
(form), **27:13**  
Incorporation by reference and flow-  
down provisions, **20:5**  
Performance and Payment Bonds  
(this index)  
Safety and liability, **11:9**  
Uniform Commercial Code, **14:18**

**INDEPENDENT CONTRACTORS**

Forms, agreements, **26:26, 26:27**  
Safety and liability, **11:3**

**INSOLVENCY**

Contingent payments, **15:12, 15:13**

**INSPECTIONS**

Claims by contractors, **22:141**  
Drafting of contract with designer,  
**22:11**  
Unanticipated site conditions, “duty  
to inspect” clauses, **2:16**

**INSTITUTIONAL FORMS**

Generally, **1:26**

## INDEX

### INSURANCE

- Delays in construction, force majeure clause, **6:33**
- Form, **26:50**
- Mechanic's liens, **7:9**
- Pollution exclusion clauses in commercial liability policies, **17:22**
- Privity, **5:21**

### INTEGRATED SETTINGS

- Americans with Disabilities Act, **24:8**

### INTEGRITY

- Visual Artists Rights Act, **25:3**

### INTELLECTUAL PROPERTY

- Contracts for work to be done on your premises, **13:19**

### INTENT

- Contingent payments, **15:5 to 15:10, 15:16 to 15:19**
- Mechanic's liens, actions inconsistent with intent to file lien, **9:12**

### INTEREST

- Quantum meruit, **18:22**

### INTERFERENCE

- Claims by contractors, **22:94**

### INTERIOR DECORATING

- Uniform Commercial Code, **14:36**

### INTERNET

- Generally, **1:17, App. B**
- Electronic contracting, **1:17**

### INTERSTATE MATTERS

- Federal Arbitration Act, interstate transactions "involving commerce," **23:4**

### INTOXICATING LIQUOR

- Alcohol Abuse (this index)

### INTRODUCTION

- Generally, **1:1 to 1:28**
- Summary and conclusion, **1:28**

### INVENTIONS

- Form, **26:52**

### INVESTIGATIONS

- Conditions at Site (this index)

### JOINT CHECKS

- Generally, **21:1 to 21:15**
- Agreements allowing joint checks, **21:2 to 21:8**
- Conclusion, **21:15**
- Condition precedent, **21:4**
- Consent required, **21:2**
- Consideration, **21:5**
- Damages, **21:14**
- Estoppel, **21:13**
- Identity of payees, **21:7**
- Mechanic's liens, acceptance as waiver, **9:10**
- Miller Act, **21:11**
- Parties' relationship, **21:8**
- Priority of competing claims, **21:10**
- Protection of rights under agreement allowing joint checks, **21:6**
- Relationship of parties, **21:8**
- Rule, **21:9**
- Scope of agreement allowing joint checks, **21:3**
- Waiver, **21:12**

### JURISDICTION

- Conditions at site, additional claims made under government contracts, **3:14**

### JURISDICTIONAL OR CRAFT RULES

- Multiemployer construction sites, **12:13**

### LABOR COSTS

- Claims by contractors, damages, **22:111**

### LANDLORD AND TENANT

- Forms, **27:6**
- Privity, **5:18**
- Quantum meruit, **18:18**
- Work letter, form, **27:6**

### LAWYERS

- Attorneys (this index)

### LEAD-BASED PAINT

- Generally, **17:18**

### LEASES

- Landlord and Tenant (this index)

**LETTER OF CREDIT**

Form, **27:14**

**LIABILITY**

Safety and Liability (this index)

**LICENSING STATUTES**

Quantum meruit, failure of contractor to comply, **18:17**

**LIENS**

Generally, **8:1 to 8:18**

Ability of other professionals to file lien claims, **8:16**

Architect's Liens (this index)

Conclusion, **8:18**

Construction managers, **8:9**

Copyright claims, **8:17**

Engineer's Liens (this index)

Mechanic's Liens (this index)

Professionals, generally, **8:1 to 8:18**  
State laws, compliance with other, **8:14**

Waiver (forms), **26:36 to 26:38, 27:15**

**LIKE EFFECT PROVISION**

Changes in contracts, requests by owner for extra work, **4:5**

**LIMITATION OF ACTIONS**

Statutes of Limitation (this index)

**LIMITATIONS OF LIABILITY**

Warranties, **16:29**

**LIQUIDATED DAMAGES**

Delays in construction, **6:7, 6:44**

**LOANS**

Equipment (forms), **26:57, 26:59**

**LOSSES**

Privity, economic loss doctrine, **5:32**

**LUMP SUM CONSTRUCTION CONTRACTS**

Forms, **26:17, 26:18**

**LUMP SUM CONTRACT PROPOSAL**

Form, **26:6**

**MACHINERY**

Mechanic's liens, **7:8**

**MANAGEMENT OF CONSTRUCTION**

Generally, **1:25**

Drafting of contract with designer, **22:8**

Forms, **26:29, 27:1, 27:2**

Liens, **8:9**

Privity, **5:19**

**MANUFACTURER'S WARRANTY**

Contract term, **16:31**

**MANUFACTURING COMPANIES**

Forms (this index)

**MASTER CONSTRUCTION AGREEMENT**

Forms, **27:11**

**MASTER CONSTRUCTION AND TERM LOAN AGREEMENT**

Form, **27:4**

**MATERIALS**

Claims by contractors, damages, **22:112**

Form, **26:54**

**MCMULLAN PRESUMPTION**

Delays in construction, **6:37**

**MECHANIC'S LIENS**

Generally, **1:4, 7:1 to 7:32, 9:1 to 9:19**

Affixation to property, **7:12**

Arbitration as waiver of right to attorneys' fees, **9:13**

Assignment, **7:6**

Attorneys' fees, arbitration as waiver of right to, **9:13**

Avoidance

generally, **7:22 to 7:23**

claims process, lien-free construction, **7:32**

commencement of action, failure to file notice of, **7:29**

direct disbursement, lien-free construction, **7:25**



## INDEX

### MECHANIC'S LIENS—Cont'd

Avoidance—Cont'd  
failure to file notice of commencement of action, **7:29**  
file notice of commencement of action, failure to, **7:29**  
lien to free construction, **7:24 to 7:29**  
notice of commencement of action, failure to file, **7:29**  
notice of nonresponsibility, **7:23**  
waiver, **7:22**

Bankruptcy, service of notice, **7:19**

Breach of contract by owner as waiver, **9:15**

Claims process, lien-free construction, **7:32**

Commencement of action, failure to file notice of, **7:29**

Conclusion, **9:19**

Conduct, waiver by, **9:7 to 9:12**

Defenses

generally, **7:31**

release of lien, **7:33**

waiver, below

Delivery vs. incorporation of materials, **7:14**

Direct disbursement, lien-free construction, **7:25**

Failure of consideration as waiver, **9:14**

Failure to file notice of commencement of action, **7:29**

Fees

arbitration as waiver of right to attorneys' fees, **9:13**

contractor's fee as lienable/nonlienable item, **7:10**

payment of, **7:5**

Filing notice of commencement of action, failure, **7:29**

Filing of liens, generally, **7:2 to 7:11**

Fraud in procuring waiver, **9:16**

Funds, lienable, **7:21**

Incorporation of prime contract, waiver, **9:3**

Incorporation vs. delivery of materials, **7:14**

### MECHANIC'S LIENS—Cont'd

Insurance premiums as lienable item, **7:9**

Intent to file lien, actions inconsistent with, **9:12**

Joint payee checks, acceptance as waiver, **9:10**

Labor, types covered, **7:11**

Lien to free construction, **7:24 to 7:29**

Location of materials, filing of lien, **7:3**

Machinery as lienable item, **7:8**

Notice

generally, **7:16**

commencement of action, failure to file, **7:29**

contents of notice, **7:17**

nonresponsibility, **7:23**

Partial written waivers, **9:9**

Party other than owner, work ordered by, **7:15**

"Pay-if-paid" clause as impermissible indirect waiver, **9:5**

Payment of fee, **7:5**

Persons who may file liens, **7:4**

Priority, relation back, **7:20**

Release of lien, **7:33**

Retention payments, waiver, **9:18**

Sample form of lien and claim waivers, **App. 7A**

Service of notice, **7:18**

Subject matter of liens, **7:7 to 7:10**

Time limit for filing of lien, **7:3**

Tools as lienable item, **7:8**

Visibility, **7:13**

Wages as lienable item, **7:7**

Waiver

generally, **7:22, 9:1 to 9:19**

arbitration as waiver of right to attorneys' fees, **9:13**

breach of contract by owner, **9:15**

conduct, waiver by, **9:7 to 9:12**

defenses of subcontractors and materialmen

generally, **9:14 to 9:18**

breach of contract by owner, **9:15**

**MECHANIC'S LIENS—Cont'd**

- Waiver—Cont'd
  - defenses of subcontractors and materialmen—Cont'd
    - execution date of waiver, **9:17**
    - failure of consideration, **9:14**
    - fraud in procuring waiver, **9:16**
    - retention payments, **9:18**
    - scope of waiver, **9:17, 9:18**
  - effect of waiver by general contractor on materialmen and subcontractors, **9:6**
  - execution date of waiver, **9:17**
  - failure of consideration, **9:14**
  - form, **26:36**
  - fraud in procuring waiver, **9:16**
  - incorporation of prime contract, **9:3**
  - intent to file lien, actions inconsistent with, **9:12**
  - joint payee checks, acceptance of, **9:10**
  - other consideration, acceptance in lieu of lien, **9:11**
  - partial written waivers, **9:9**
  - “pay-if-paid” clause as impermissible indirect waiver, **9:5**
  - retention payments, **9:18**
  - scope of waiver, **9:17, 9:18**
  - statutory restrictions, **9:4, 9:5**
  - written waivers, **9:7, 9:8, 9:9**
- Written waivers, **9:7, 9:8, 9:9**

**MEDIATION PROCEDURES**

- Arbitration, **App. 23A**

**MEETINGS**

- Management of designer, **22:27**

**MERCHANTABILITY**

- Uniform Commercial Code, warranties, **14:8, 14:44**

**MILLER ACT**

- Delays in construction, **6:35**
- Joint checks, **21:11**
- Performance and payment bonds, recovery under bond, **10:30**

**MISREPRESENTATION**

- Fraud and Misrepresentation (this index)

**MODIFICATIONS TO CONTRACTS**

- Changes in Contracts (this index)
- Performance and payment bonds, modification of agreement between owner and contractor, **10:14**

**MULTIEMPLOYER**

**CONSTRUCTION SITES**

- Generally, **12:1 to 12:27**
- Allocation of control of hazard, **12:9**
- Alternative safety measures, **12:11**
- Anning-Johnson/ Grossman Steel framework, **12:3 to 12:14**
- Complaint by subcontractor, adequacy of, **12:12**
- Compliance requirements, **12:17 to 12:23**
- Conclusion, **12:27**
- Control of hazard
  - generally, **12:4 to 12:10, 12:17 to 12:23**
  - compliance requirements, **12:17 to 12:23**
  - contractual allocation of control, **12:9**
  - general contractor liable for subcontractor safety violations, **12:5**
  - general supervisory authority over construction site, **12:18**
  - noncontrolling employers, responsibility of, **12:8**
  - realistic measures, taking of, **12:23**
  - reasonable effort to detect hazard, **12:22**
  - subcontractor liable for subcontractor safety violations, **12:7**
- Craft or jurisdictional rules, **12:13**
- Duty of care, creation for tort actions, **12:14**
- Environmental issues, **17:20**
- Federal sector, application of defense to, **12:15**

## INDEX

### **MULTIEMPLOYER**

#### **CONSTRUCTION SITES**

##### **—Cont'd**

- Hazard Communication Rule, **12:25**
- Jurisdictional or craft rules, **12:13**
- Occupational Safety and Health Act, generally, **12:1 to 12:27**
- OSHA Field Inspection Reference Manual Multiemployer Citation Policy, **12:16**
- Realistic measures, control of hazard, **12:23**
- Reasonable effort to detect hazard, **12:22**
- Reasonable efforts to abate hazard generally, **12:10 to 12:14**
  - alternative safety measures, **12:11**
  - complaint by subcontractor, adequacy of, **12:12**
  - craft or jurisdictional rules, **12:13**
- Site owner liability, **12:26**
- State statutes, **12:24**
- Statutory provisions, **12:2**

### **NATIONAL ENVIRONMENTAL POLICY ACT**

- Generally, **17:16**

### **NEGLIGENCE**

- Exposure to hazardous materials, **17:21**
- Hiring, negligent, **11:11**
- Privity (this index)

### **NEGOTIATIONS**

- Uniform Commercial Code, disclaimer of warranties after ineffective, **14:42**

### **NEW SOURCE REVIEW**

- Clean Air Act, **17:3**

### **“NO DAMAGE FOR DELAY” CLAUSES**

- Delays in Construction (this index)

### **NOTICE**

- Claims by contractors, differing conditions at site, **22:89**
- Engineer's liens, **8:12**
- Mechanic's Liens (this index)

### **NOTICE—Cont'd**

- Performance and Payment Bonds (this index)
- Privity, breach of warranty, **5:30**
- Termination of contracts, **1:6**
- Unanticipated site conditions, **2:7**
- Uniform Commercial Code, warranties, **14:10**
- Warranties (this index)

### **NPDES**

- Clean Water Act, **17:12**

### **OBJECTIONS**

- Changes in contracts, additional work performed without objection, **4:7**

### **OCCUPATIONAL SAFETY AND HEALTH ACT**

- Multiemployer Construction Sites (this index)

### **OCCURRENCE OF BREACH**

- Common areas of disagreement, **1:3**

### **OPTION CLAUSES**

- Davis-Bacon Act, **19:12**

### **PAINT**

- Lead-based paint, **17:18**

### **PARALLEL PRIME APPROACH**

- Generally, **1:24**

### **PAROL EVIDENCE**

- Conditions at site, **3:10**

### **PARTIAL PAYMENTS**

- Contingent payments, **15:10, 15:23**

### **PARTIES**

- Americans with Disabilities Act, **24:2 to 24:4**
- Arbitration agreement, enforcement of, **23:25**
- Delays in construction, parties at fault, **6:19**
- Joint checks, relationship of parties, **21:8**

### **PASS-THROUGH CLAIMS**

- Privity, **5:31**

## **PAYMENT**

- Bonds. Performance and Payment Bonds (this index)
- Contingent Payments (this index)
- Contracts for work to be done on your premises, **13:6**
- Drafting of contract with designer, **22:13**
- Mechanic's liens, **7:5**
- Performance and Payment Bonds (this index)
- Requisitions for payment, **22:57**
- Retention payments, mechanic's liens, **9:18**

## **PENALTIES**

- Davis-Bacon Act (this index)

## **PERFORMANCE AND PAYMENT BONDS**

- Generally, **10:1 to 10:41**
- Acceptance by owner of substantially completed project, liability of surety, **10:8**
- Calculation of recovery under bond, **10:34**
- Claim under policy of insurance, **10:38**
- Contingent pay clause excuses bond obligation, surety's obligations after principal's release, **10:27**
- Defects or deficiencies in work of contractor, liability of surety, **10:8 to 10:10**
- Equitable subordination, surety's right to, **10:39**
- Excess contract proceeds, recovery under bond, **10:36**
- Failure to comply with bonding statute, **10:41**
- Federal construction contracts, **10:2**
- Filing, time for filing claim, **10:32**
- Forms, **26:41 to 26:43**
- Frustration of purpose doctrine, liability of surety, **10:10**
- Good faith of surety, **10:23**
- Insurer and surety, comparison between, **10:23, 10:24**

## **PERFORMANCE AND PAYMENT BONDS—Cont'd**

- Liability of surety
  - acceptance by owner of substantially completed project, **10:8**
  - defects or deficiencies in work of contractor, **10:8 to 10:10**
  - frustration of purpose doctrine, **10:10**
  - modification of agreement between owner and contractor, below notice of default, below
  - pre-bond work, **10:7**
  - warranties of contractor, **10:9**
- Liquidated damages, **10:40**
- Liquidated damages, surety's right to equitable subordination, **10:39**
- Material change to contract between owner and contractor, **10:12**
- Miller Act, recovery under bond, **10:30**
- Modification of agreement between owner and contractor
  - generally, **10:11 to 10:15**
  - material change to contract, **10:12**
  - prejudice to surety, **10:11**
  - substantial increase of risk, **10:13**
  - waiver of defense, **10:15**
- Notice of default
  - generally, **10:16 to 10:20**
  - damages avoidable with notice, **10:17**
  - statutory requirements, **10:18**
- Persons entitled to recovery under bond, **10:28, 10:29**
- Pre-bond work, **10:7**
- Prejudice to surety, modification of agreement between owner and contractor, **10:11**
- Private right of action against government, **10:41**
- Privity, **5:27, 5:28**
- Recovery under bond
  - generally, **10:28 to 10:37**
  - calculation of recovery, **10:34**
  - excess contract proceeds, **10:36**
  - Miller Act, **10:30**

## INDEX

### **PERFORMANCE AND PAYMENT BONDS—Cont'd**

- Recovery under bond—Cont'd
  - persons entitled to recovery, **10:28, 10:29**
  - set off, **10:37**
  - tender under bond, **10:31**
  - time for filing claim
    - generally, **10:32**
    - Miller Act, **10:33**
    - waiver, **10:35**
- Release of principal, obligations of surety after, **10:25**
- Requirements under contract, **10:3**
- Reservation of rights by creditor, obligations of surety after release of principal, **10:26**
- Right to equitable subordination, surety's, **10:39**
- Risk, substantial increase for modification of agreement between owner and contractor, **10:14**
- Set off, recovery under bond, **10:37**
- Statutory provisions noncompliance, **10:41**
- Statutory requirements, **10:4**
- Subcontractors as third party beneficiaries of owner's performance bond, **10:5**
- Subcontractors not granted third-party beneficiary status, **10:6**
- Subordination, surety's right to equitable, **10:39**
- Surety's obligations after principal's release, contingent pay clause excuses bond obligation, **10:27**
- Surety's right to equitable subordination, **10:39**
- Tender under bond, **10:31**
- Time and date
  - pre-bond work, **10:7**
  - recovery under bond, *supra*
- Waivers
  - bond requirement, of, **10:21, 10:22**
  - defense, of, **10:15**
  - recovery under bond, **10:35**
- Warranties of contractor, liability of surety, **10:9**

### **PLUMBING SERVICES**

- Form, **26:58**

### **POLLUTION EXCLUSION CLAUSES**

- Environmental issues, commercial liability policies, **17:22**

### **PREDOMINANT FACTOR/PURPOSE TEST**

- UCC Article 2 applicability, **14:21**

### **PREFABRICATED BUILDINGS**

- Uniform Commercial Code, **14:27**

### **PREJUDGMENT INTEREST**

- Quantum meruit, **18:22**

### **PREJUDICE**

- Performance and payment bonds, modification of agreement between owner and contractor, **10:11**

### **PRELIMINARY SITE WORK**

- Engineer's liens, **8:10**

### **PRICES**

- Generally, **1:21**

### **PRIME CONTRACTORS**

- Delays in construction, coordination of work of prime contractors, **6:10**
- Mechanic's liens, incorporation of prime contract, **9:3**
- Privity, co-prime contractors, **5:16**

### **PRIVATE RIGHT OF ACTION**

- Davis-Bacon Act, **19:19**
- Performance and payment bonds, **10:41**

### **PRIVITY**

- Generally, **1:7, 5:1 to 5:32**
- Accepted work doctrine, negligence and fraud, **5:24**
- Agency theory
  - generally, **5:17 to 5:21**
  - apparent agent of owner, contractor as, **5:20**
  - arbitration clauses, **5:26**
  - construction manager as agent of owner, **5:19**

**PRIVITY—Cont'd**

Agency theory—Cont'd  
     insurance coverage, acquisition of, **5:21**  
     landlord/ tenant relationship, **5:18**  
 Apparent agent of owner, contractor as, **5:20**  
 Arbitration clauses, **5:25, 5:26**  
 Benefit to owner, quantum meruit, implied contract and unjust enrichment, **5:5**  
 Construction manager as agent of owner, **5:19**  
 Contracts with owner, co-prime contractors as beneficiaries of, **5:16**  
 Co-prime contractors, **5:16**  
 Economic loss doctrine, **5:32**  
 Expectation of payment, quantum meruit, implied contract and unjust enrichment, **5:6**  
 Express contract between contractor and lessee of property, quantum meruit, implied contract and unjust enrichment, **5:3**  
 Fraud. Negligence and fraud, below  
 Full payment to someone for work of subcontractor, quantum meruit, implied contract and unjust enrichment, **5:4**  
 Hold-back provision in general contractor/ subcontractor contract, rights of materialmen, **5:11**  
 Implied contract. Quantum meruit, implied contract and unjust enrichment, below  
 Insurance coverage, acquisition of, **5:21**  
 Landlord/ tenant relationship, **5:18**  
 Negligence and fraud  
     generally, **5:22 to 5:24**  
     accepted work doctrine, **5:24**  
     duty, concepts of, **5:23**  
 Notice of breach of warranty, **5:30**  
 Owners, co-prime contractors as beneficiaries of contracts with, **5:16**  
 Pass-through claims, **5:31**  
 Payment bonds, **5:27, 5:28**

**PRIVITY—Cont'd**

Quantum meruit, implied contract and unjust enrichment  
     generally, **5:2 to 5:7, 18:19**  
     benefit to owner, **5:5**  
     expectation of payment, **5:6**  
     express contract between contractor and lessee of property, **5:3**  
     full payment to someone for work of subcontractor, absence of, **5:4**  
 Statutory remedies, **5:8, 5:9**  
 Statutory remedies, exclusivity of, **5:8, 5:9**  
 Third party beneficiaries  
     generally, **5:10 to 5:15**  
     contracts with owner, co-prime contractors as beneficiaries of, **5:16**  
     co-prime contractors, **5:16**  
     general contractor/ subcontractor contract, owner as incidental beneficiary of, **5:13**  
     hold-back provision in general contractor/ subcontractor contract, rights of materialmen, **5:11**  
     owner/general contractor contract, subcontractor as incidental beneficiary of, **5:12**  
     owners, co-prime contractors as beneficiaries of contracts with, **5:16**  
     rights of, **5:15**  
     subcontractor/ subsubcontractor contract, general contractor as third party beneficiary of, **5:14**  
 Unjust enrichment. Quantum meruit, implied contract and unjust enrichment, above  
 Warranties  
     generally, **5:29, 5:30**  
     Uniform Commercial Code, **14:7**

**PROGRESS REPORTS**

Management of designer, **22:23**

**PROMOTIONAL MATERIALS**

Uniform Commercial Code, creation of warranty despite lack of privity, **14:43**

## INDEX

### PROMOTIONAL WORKS

Visual Artists Rights Act, **25:11**

### PROMPT PAYMENT ACTS

Architect's liens, **8:15**

### PUBLIC POLICY

Contingent payments, **15:14**

### PUFFING

Express warranties, **16:11**

### PURCHASE ORDERS

Supplementary terms and conditions (form), **26:23**

### QUALIFICATIONS OF PERSONNEL

Contracts for work to be done on your premises, **13:23**

### QUANTUM MERUIT

Generally, **18:1 to 18:23**

Arbitration, **18:13**

Benefits, receipt by charged entity, **18:20**

Breach of contract, **18:11**

Burden of proof, **18:5**

Case discussions, **18:4 et seq.**

Changes in contracts, **4:19**

Clear contracts, **18:7 to 18:10**

Conclusion, **18:23**

Defendant, expectation of payment from, **18:6**

Elements, **18:5**

Express contracts, **18:2**

Failure to file lien, **18:16**

Implied contracts, **18:3**

Interest, prejudgment, **18:22**

Landlord and tenant, **18:18**

Licensing statute, failure of contractor to comply with, **18:17**

Partial performance, **18:10**

Prejudgment interest, **18:22**

Privity (this index)

Seventh Amendment, issue preclusion, **18:21**

Subcontractor's unjust enrichment claim against owner, **18:14**

Third party beneficiary, expectation of payment from, **18:6**

### QUANTUM MERUIT—Cont'd

Value of services rendered, proof of, **18:15**

Waiver of right to sue by nonbreaching party, **18:12**

### QUESTIONS OF LAW OR FACT

Contingent payments, intent and ambiguity, **15:9, 15:16**

Unanticipated site conditions, existence of differing site condition, **2:5**

### REASONABLE AND CUSTOMARY CARE

Warranties, errors of design professionals, **16:9**

### REASONABLE TIME FOR PAYMENT

Contingent Payments (this index)

### REASONABLE TIME REQUIREMENT

Delays in construction, **6:3**

### RECOVERY UNDER BOND

Performance and Payment Bonds (this index)

### RELEASES

Delays in construction, waiver of delay damages, **6:14**

Forms, **26:39, 26:40**

Mechanic's liens, **7:33**

Performance and payment bonds, obligations of surety after release of principal, **10:25**

### RELIANCE

Conditions at site, misrepresentation of site conditions, **3:4**

Contingent payments, credit of owner, **15:21**

Uniform Commercial Code, warranty of fitness for particular purpose, **14:45 to 14:49**

### REPAIRMEN EXCEPTION

Safety and liability, strict liability, **11:12**

### REPORTS

Management of designer, **22:29**



**REQUESTS BY OWNER**

Changes in Contracts (this index)

**RES JUDICATA**

Arbitration, **23:23**

**RESERVATION OF RIGHTS**

Performance and payment bonds,  
obligations of surety after  
release of principal, **10:26**

**RESOURCE CONSERVATION AND  
RECOVERY ACT**

Generally, **17:7, 17:7 to 17:10**

**RETENTION PAYMENTS**

Mechanic's liens, waiver, **9:18**

**REVOCATION OF ACCEPTANCE**  
Uniform Commercial Code, **14:14**

**ROOFING PRODUCTS**

Uniform Commercial Code, **14:22**

**SAFETY AND LIABILITY**

Generally, **1:9, 11:1 to 11:14**

Conclusion, **11:14**

Contractors for actions of liability of  
property owner

generally, **11:5 to 11:9**

employee of contractor, injury to,  
**11:7**

indemnity, **11:9**

independent contractors, **11:3**

public, injury to, **11:8**

Contracts for work to be done on  
your premises, **13:7**

Disclaimers, owner's ability to limit  
liability by, **3:11 to 3:16**

Employee of contractor, injury to,  
**11:7**

Forms (this index)

Indemnity, **11:9**

Independent contractors, inherently  
dangerous work, **11:4**

Independent contractors, property  
owner's duty of care, **11:2**

Multiemployer Construction Sites  
(this index)

Negligent hiring, liability of property  
owner for, **11:11**

**SAFETY AND LIABILITY—Cont'd**

Occupational Safety and Health Act.

Multiemployer Construction

Sites (this index)

On to premises work by contractors,  
generally, **11:1 to 11:14**

Ordinary care, duty of property  
owner, **11:2**

Public, injury to, **11:8**

Repairmen exception, strict liability,  
**11:13**

Strict liability, **11:12**

Tools, liability of property owner for  
loaned, **11:10**

Warn, duty of property owner to, **11:5**

**SALES OF GOODS**

Uniform Commercial Code (this  
index), **1:8**

**SAMPLES**

Conditions at site, misrepresentation  
of site conditions, **3:3**

**SCHEDULES**

Claims by contractors, **22:80, 22:142**

Drafting of construction contracts,  
**22:36**

Drafting of contract with designer,  
**22:12**

Management of designer, **22:21**

**SECRECY**

Form, **26:52**

**SECURITIES AND EXCHANGE  
COMMISSION**

EDGAR Database, forms from, **27:1  
to 27:17, App. C**

**SECURITY**

Contracts for work to be done on  
your premises, **13:24**

**SERVICE OF PAPERS**

Mechanic's liens, notice, **7:18**

**SERVICES**

Uniform Commercial Code (this  
index)

## INDEX

### SET OFF

Performance and payment bonds  
recovery under bond, **10:37**

### SEVENTH AMENDMENT

Quantum meruit, issue preclusion,  
**18:21**

### SEVERABILITY

Arbitration agreements, **23:5, 23:17**

### SEXUAL HARASSMENT

Contracts for work to be done on  
your premises, **13:12**

### SITE ACCESS

Access to Site (this index)

### SITE OWNER LIABILITY

Multiemployer construction sites,  
**12:26**

### SITE-SPECIFIC ART

Visual Artists Rights Act, **25:14**

### SMALL CONSTRUCTION CONTRACTS

Form, **26:9**

### SOLICITATION

Bids (form), **26:1**

### SOVEREIGN IMMUNITY

Delays in construction, **6:36**  
Visual Artists Rights Act, **25:19**

### SPEARIN DOCTRINE

Warranties, accuracy of plans and  
specifications, **16:2**

### SPECIAL SERVICES AGREEMENTS

Form, **26:8**

### STANDARD DOCUMENTS

Value in development of owner's  
standard documents, **22:5**

### STATE COURTS

Delays in construction, **6:41**

### STATE STATUTES

Arbitration acts. Arbitration (this  
index)  
Delays in construction, **6:43**

### STATE STATUTES—Cont'd

Multiemployer construction sites,  
**12:24**

### STATUTE OF FRAUDS

Uniform Commercial Code, **14:13**

### STATUTES OF LIMITATION

Claims by contractors, **22:106**  
Uniform Commercial Code, warran-  
ties, **14:12**

### STEEL BEAMS

Uniform Commercial Code, **14:26**

### STRICT CONSTRUCTION

Delays in construction, "no damage  
for delay" clauses, **6:18**

### STRICT LIABILITY

Uniform Commercial Code (this  
index)

### SUBORDINATION

Performance and payment bonds,  
**10:39**

### SUBSTITUTION

Claims by contractors, improper  
denial, **22:92**

### SUPERVISION

Architect's liens, **8:3, 8:6**  
Forms, **26:54, 26:56**

### SUPPLEMENTAL COSTS

Claims by contractors, damages,  
**22:116**

### SUPPLEMENTARY TERMS AND CONDITIONS

Contracts for work to be done on  
your premises, **13:27**

### SUPPLIERS

Release (form), **26:39**

### SURETIES

Contingent Payments (this index)  
Delays in construction, recovery by  
owner of damages from surety  
of contractor, **6:8**  
Performance and Payment Bonds  
(this index)

**SUSPENSION OF WORK CLAUSE**

Delays in construction, **6:42**

**SWIMMING POOLS**

Uniform Commercial Code, tender and rejection, **14:34**

**TAXES**

Contracts for work to be done on your premises, **13:18**

**TENANTS**

Landlord and Tenant (this index)

**TENDER**

Performance and payment bonds, **10:31**

**TERMINATION OF CONTRACTS**

Common areas of disagreement, termination for convenience, **1:5**

Contracts for work to be done on your premises, **13:14**

Davis-Bacon Act, **19:16**

Drafting of construction contracts, **22:40**

Notice, **1:6**

**TESTING, INVASIVE**

Conditions at site, **3:5**

**THIRD PARTY BENEFICIARIES**

Arbitration, **23:26**

Privity (this index)

Quantum meruit, expectation of payment, **18:6**

Uniform Commercial Code, warranties, **14:51**

Warranties, **16:26**

**THREE GAPS**

Management of designer, **22:31**

**TIME AND DATE**

Contracts for work to be done on your premises, **13:15**

Delays in Construction (this index)

Engineer's liens, filing of, **8:13**

Express warranties, duration, **16:12**

Mechanic's liens, filing of lien, **7:3**

Performance and Payment Bonds (this index)

Statutes of Limitation (this index)

**TIME AND DATE—Cont'd**

Warranties (this index)

**TOOLS**

Mechanic's liens, **7:8**

Owner of property, liability of, **11:10**

**TRADE PRACTICE OR CUSTOM**

Changes in contracts, use to determine meaning of ambiguous term in change directive, **4:24**

**TYPES OF CONSTRUCTION CONTRACTS**

Generally, **1:20 to 1:27**

Construction managers, **1:25**

Design/build contract, **1:23**

Fast-track approach, **1:22**

Institutional forms, **1:26**

Parallel prime approach, **1:24**

Prices, **1:21**

Work letters, **1:27**

**UCC**

Uniform Commercial Code (this index)

**UNABSORBED HOME OFFICE OVERHEAD**

Delays in Construction (this index)

**UNANTICIPATED SITE CONDITIONS**

Generally, **2:1 to 2:17**

Breach of contract claim, **2:17**

Differing site conditions clauses, **2:2 to 2:7, 2:10**

Disclaimers. Exculpatory and disclaimer clauses, below

Discovery by contractor, **2:4**

"Duty to inspect" clauses, **2:16**

Exculpatory and disclaimer clauses generally, **2:8 to 2:11**

differing site conditions clauses, relationship to, **2:10**

effective disclaimers, **2:11**

federal contracts, **2:9**

Extra work clauses, **2:6**

Failure to disclose. Misrepresentation and failure to disclose, below

## INDEX

### UNANTICIPATED SITE

#### CONDITIONS—Cont'd

- Federal contracts, exculpatory and disclaimer clauses, **2:9**
- Fraud. Misrepresentation and failure to disclose, below
- Misrepresentation and failure to disclose
  - generally, **2:12 to 2:15**
  - definite description, **2:14**
  - obligation of contractor to review ancillary documents referenced in contract, **2:15**
- Notice requirements in clauses, **2:7**
- Obligation of contractor to review ancillary documents referenced in contract, **2:15**
- Question of law, existence of differing site condition as, **2:5**
- Triggering of differing site conditions clause, **2:3**

### UNDERGROUND STORAGE

#### TANKS

- Resource Conservation and Recovery Act, **17:9**

### UNIFORM COMMERCIAL CODE

- Generally, **1:8, 14:1 to 14:54**
- Acceptance, revocation of, **14:14**
- Air handling units, design, testing, and supervision incidental to purchase of, **14:24**
- Barn, construction of, **14:31**
- Contract for the UCC to apply, **14:33**
- Contract formation issues, **14:3**
- Dehumidification system, purchase and installation of, **14:23**
- Design, testing, and supervision incidental to purchase of air handling units, **14:24**
- Electrical substation constitutes goods under predominant purpose test, **14:29**
- Fire alarm systems, **14:35**
- Fitness for particular purpose, warranties, **14:9, 14:39 to 14:43**
- Frauds, statute of, **14:13**
- General rules, Uniform Commercial Code application, **14:15**

### UNIFORM COMMERCIAL CODE

#### —Cont'd

- Goods or services
  - generally, **14:16, 14:16 to 14:36**
  - air handling units, design, testing, and supervision incidental to purchase of, **14:24**
  - barn, construction of, **14:31**
  - dehumidification system, purchase and installation of, **14:23**
  - design, testing, and supervision incidental to purchase of air handling units, **14:24**
  - electrical substation constitutes goods under predominant purpose test, **14:29**
  - fire alarm systems, **14:35**
  - granite processing constitutes goods under predominant purpose test, **14:28**
  - interior decorating, **14:36**
  - large and complex construction project, **14:37**
  - mixed goods and services, **14:16**
  - performance of contract as center of dispute, **14:32**
  - prefabricated building, sale and erection of, **14:27**
  - roofing products, supplying of, **14:22, 14:30**
  - steel beams, supplying of, **14:26**
  - substantial justification for application of UCC, **14:38**
  - swimming pool, tender and rejection, **14:34**
  - tests for determining applicability of UCC, **14:21 to 14:37**
- Granite processing constitutes goods under predominant purpose test, **14:28**
- House as “product,” strict liability, **14:53**
- Indemnification, **14:18**
- Interior decorating, **14:36**
- Justification for application of UCC, substantial, **14:38**
- Large and complex construction project, **14:37**
- Mixed goods and services, **14:17**

## UNIFORM COMMERCIAL CODE

### —Cont'd

- Negotiations, disclaimer of warranties after ineffective, **14:42**
- Notice requirement, warranties, **14:10**
- Performance of contract as center of dispute, **14:32**
- Predominant factor/ purpose test, **14:25, 14:29**
- Prefabricated building, sale and erection of, **14:27**
- Privity, warranties, **14:7**
- Promotional materials, creation of warranty despite lack of privity, **14:43**
- Reliance required for warranty of fitness for particular purpose, **14:45 to 14:49**
- Revocation of acceptance, **14:14**
- Roofing products, supplying of, **14:22, 14:30**
- Sales of goods, generally, **1:8, 14:1 to 14:54**
- Services. Goods or services, above
- Specifications provided by owner or buyer, warranty of fitness for particular purpose, **14:47 to 14:49**
- Statute of frauds, **14:13**
- Statute of limitations, warranties, **14:12**
- Steel beams, supplying of, **14:26**
- Strict liability
  - generally, **14:52 to 14:54**
  - damage only to defective property itself, denial of recovery, **14:54**
  - house as “product,” **14:53**
- Summary and conclusions, **14:20**
- Swimming pool, tender and rejection, **14:34**
- Tests for determining applicability of UCC, **14:21 to 14:37**
- Third party beneficiaries, warranties, **14:51**
- Tort remedies vs. UCC remedies, **14:4**

## UNIFORM COMMERCIAL CODE

### —Cont'd

- UCC application in a purely service transaction, **14:19**
- Warranties
  - generally, **14:5 to 14:12, 14:39 to 14:43**
  - defects in workmanship vs. suitability of system as whole, application of disclaimer, **14:41**
  - disclaimers, **14:11, 14:40 to 14:43**
  - express warranties, **14:6**
  - fitness for particular purpose, **14:9, 14:47 to 14:49**
  - implied warranty despite disclaimer, creation by contractor as agent of supplier, **14:40**
  - merchantability, **14:8, 14:44**
  - negotiations, disclaimer after ineffective, **14:42**
  - non-UCC implied warranties developed by case law, **14:50**
  - notice requirement, **14:10**
  - privity, **14:7**
  - promotional materials, creation of warranty despite lack of privity, **14:43**
  - reliance required for warranty of fitness for particular purpose, **14:45 to 14:49**
  - specifications provided by owner or buyer, fitness for particular purpose, **14:47 to 14:49**
  - statute of limitations, **14:12**
  - third party beneficiaries, **14:51**

## UNIONS

- Disputes, state arbitration acts, **23:29**

## UNJUST ENRICHMENT

- Davis-Bacon Act, **19:21**
- Quantum Meruit (this index)

## UTILITIES

- Claims by contractors, inadequacy of utilities, **22:93**
- Contracts for work to be done on your premises, **13:20**
- Forms (this index)

## INDEX

### VERBAL ORDERS

Waiver of writing requirement,  
changes in contracts, **4:13**

### VISUAL ARTISTS RIGHTS ACT

Generally, **1:16, 25:1 to 25:22**

Advertising, **25:11**

Attorney's fees, recovery, **25:22**

Attribution, claim to enforce right,  
**25:4**

Claim for destruction, **25:2**

Claim to enforce right of attribution,  
**25:4**

Claim to enforce right of integrity,  
**25:3**

Construction, renovation, conserva-  
tion, **25:17**

Destruction, claim for, **25:2**

Duration of rights, **25:15**

Enforcement

claim to enforce right of attribu-  
tion, **25:4**

claim to enforce right of integrity,  
**25:3**

Exclusions under

advertising, **25:11**

functional art, **25:12**

promotional works, **25:11**

site-specific art, **25:14**

Visual Artists Rights Act of 1990,  
**25:9**

works for hire, **25:10**

works illegally placed on property,  
**25:13**

Functional art, **25:12**

Immovable art, **25:8**

Immunity, sovereign, **25:19**

Insurance, **25:18**

Integrity, claim to enforce right, **25:4**

Lease contract provision, **App. 25A**

Promotional works, **25:11**

Recognized stature, establishing,  
**25:16**

Recovery, **25:21**

Site-specific art, **25:14**

Sovereign immunity, **25:19**

Temporary works, **25:7**

Unfinished works, **25:6**

Waiver, **25:20**

### VISUAL ARTISTS RIGHTS ACT

—Cont'd

Works for hire, **25:10**

Works illegally placed on property,  
**25:13**

### WAGES, MINIMUM

Davis-Bacon Act (this index)

### WAIVER

Arbitration, right to compel, **23:11**

Avoidance of waivers, administration  
of contracts, **22:52 to 22:54**

Changes in Contracts (this index)

Delays in construction, damages for,  
**6:13, 6:14**

Forms (this index)

Joint checks, **21:12**

Mechanic's Liens (this index)

Performance and payment bonds,  
**10:15, 10:21, 10:22**

Quantum meruit, right to sue of  
nonbreaching party, **18:12**

Visual Artists Rights Act, **25:20**

### WARNINGS

Conditions at site, field verification  
required or drawings not to  
scale, **3:12**

Owner of property, duty of, **11:5**

### WARRANTIES

Generally, **16:1 to 16:31**

Accuracy of plans and specifications  
generally, **16:1 to 16:24**

claim notice, **16:3**

defenses available to owner, **16:6**

notice of claim, **16:3**

repercussions of breach of war-  
ranty, **16:4**

Spearin Doctrine, **16:2**

Arbitration, **16:25**

Architects. Design professionals,  
errors of, below

Breach, elements of proof to estab-  
lish, **16:5**

Breach of warranty, accuracy of plans  
and specifications, repercussions  
of, **16:4**

## WARRANTIES—Cont'd

- Care, errors of design professionals in reasonable and customary, **16:9**
- Claim notice, accuracy of plans and specifications, **16:3**
- Component parts doctrine, **16:21**
- Consequential damages, recovery of, **16:28**
- Contracts for work to be done on your premises, **13:17**
- Damages, recovery of consequential, **16:28**
- Defect, degree of, for implied warranty of habitability, **16:16**
- Defenses available to owner, accuracy of plans and specifications, **16:6**
- Design professionals, errors of generally, **16:7 to 16:9**  
implied promise to use reasonable and customary care, **16:9**  
majority view, **16:7**  
minority view, **16:8**
- Disclaimer, **16:18**
- Disclaimers, **16:29**
- Duration of express warranties, **16:12**
- Engineers. Design professionals, errors of, above
- Express warranties, **16:10, 16:14**
- Fitness for particular purpose, implied warranties, **14:9, 14:48 to 14:49, 16:20**
- Guaranties, **16:30**
- Habitability, implied warranties, **16:15 to 16:18**
- Implied warranties  
generally, **16:14 to 16:15**  
degree of defect, habitability, **16:16**  
disclaimer, habitability, **16:18**  
fitness for particular purpose, **14:9, 14:50 to 14:51, 16:20**  
habitability, **16:15 to 16:18**  
malfunction theory, habitability, **16:19**  
new homes, habitability, **16:15 to 16:18**

## WARRANTIES—Cont'd

- Implied warranties—Cont'd  
persons covered, habitability, **16:17**  
repair and replacement warranty does not abrogate implied warranty of workmanlike performance, **16:14**  
workmanlike performance, **16:13**
- Limitations of liability, **16:29**
- Malfunction theory, **16:19**
- Manufacturer, **16:31**
- New homes, implied warranty of habitability, **16:15 to 16:18**
- Notice  
breach of warranty, **16:22**  
claim, **16:3**
- Performance and payment bonds, **10:9**
- Plans. Accuracy of plans and specifications, above
- Privity, **5:29, 5:30**
- Public policy, **16:27**
- Puffing, express warranties, **16:11**
- Recovery of consequential damages, **16:28**
- Repair and replacement warranty does not abrogate implied warranty of workmanlike performance, **16:14**
- Spearin Doctrine, accuracy of plans and specifications, **16:2**
- Specifications. Accuracy of plans and specifications, above
- Third party beneficiaries, **16:26**
- Time  
bringing action, **16:23**  
discovery rule, **16:24**  
express warranties, duration, **16:12**
- Uniform Commercial Code (this index)
- Workmanlike performance, implied warranties, **16:13, 16:14**

## WASTE

- Resource Conservation and Recovery Act, **17:8**

## WETLANDS

- Clean Water Act, **17:13**



INDEX

**WILLFUL AND DELIBERATE  
INTERFERENCE**

“No damage for delay” clauses, **6:26**

**WITHHOLDING AND  
CHALLENGES TO  
WITHHOLDING**

Davis-Bacon Act, **19:15**

**WORK LETTERS**

Generally, **1:27, 27:6**

**WORKMANLIKE  
PERFORMANCE**

Implied warranties, **16:13, 16:14**

**WORKS FOR HIRE**

Visual Artists Rights Act, **25:10**

**WRITTEN PROCEDURES**

Administration of Contracts (this  
index)

**WRONGFUL TERMINATION**

Claims by contractors, **22:97**