

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**

ACQUIESCE

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 alterations, **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**
 intertalated 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**

BIBLIOGRAPHYGenerally, **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,
22:10Management 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, belowAntiwaiver 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,
4:15Documentation. Proper written
documentation, changes
without, below**CHANGES IN CONTRACTS****—Cont'd**Drafting of construction contracts,
22:37Drafting of contract with designer,
22:14Essential term of original contract,
modification of, **4:23**Evidence of waiver by owner of written
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,
4:8Form, sample change orders, **27:19**Government contractors, changes
without proper written
documentation, **4:9**Inaction by owner as waiver of written
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 withoutgenerally, **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 par-
ties, **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 coordina-
tion of work of prime contrac-
tors, **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, govern-
ment 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 decisions, **22:28**
failure to comply with requirements 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, warranties, **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 Artists Rights Act, **25:22**

Manufacturing company, cost-plus-fixed-fee construction agreements, **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 suppliers, **26:49**

Annual contractor services agreement, **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 services 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 services, contract for, **26:35**

equipment rental, **26:59**

independent contractor's agreements, **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 written 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 inconsis-
 tent 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 impermis-
 sible 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, warran-
 ties, **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, ade-
 quacy 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 viola-
 tions, **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 sub-
 subcontractor safety viola-
 tions, **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**
- 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**
- Priority, **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 privacy, **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, warra-n-
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, conservation, **25:17**

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

Duration of rights, **25:15**

Enforcement

claim to enforce right of attribution, **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 warranty, **16:4**

Spearin Doctrine, **16:2**

Arbitration, **16:25**

Architects. Design professionals, errors of, below

Breach, elements of proof to establish, **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**