

DSA Clauses for consideration: (If using non-AIA contract forms)

Indemnification

Architect hereby agrees to indemnify and hold harmless Client from and against any and all liability, loss, cost, claim, damage, injury or death (including those of third parties) and all costs and expenses (including reasonable attorney's fees and costs of any litigation related thereto) incurred or sustained by, or asserted against Client, arising out of, or as a result of, or related to:

i) Architect's negligence; ii) Architect's breach of any representation, obligation or responsibility imposed on it by provisions of this Agreement, or iii) any failure by Architect to perform the covenants given by Architect pursuant to this Agreement.

Comment: If it appears, strike the word 'defend' from this paragraph. It is not covered by professional liability insurance policies.

Client hereby agrees to indemnify, save and hold harmless Architect from and against any and all liability, loss, cost, claim, damage, injury or death (including those of third parties) and all costs and expenses (including reasonable attorney's fees and costs of any litigation related thereto) incurred or sustained by, or asserted against Architect, arising out of, or as a result of, or related to:

i) Client's negligence; ii) Client's breach of any representation, warranty, obligation or responsibility imposed on it by provisions of this Agreement, or iii) any failure by Client to perform the covenants given by Client pursuant to this Agreement.

Comment: Whenever possible, try to include this clause in your contracts.

Severability

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Comment: A worthwhile addition to your contracts.

Non-Payment of Invoiced Amounts

On occasion, there will be Clients who will be slow to pay, or refuse to pay invoiced amounts.

If the Client fails to make payments to the Architect in accordance with the terms of this Agreement, such failure shall be considered substantial non-performance and a cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. In either case, the Architect shall provide Client with seven (7) calendar days' written notice of such pending action. As a result of either of these actions, the Architect shall have no liability to the Client, or other parties involved in the project, for delay or damage caused. Before resuming services, the Architect shall be paid all sums previously invoiced and due.

Comment: Why not?

SPECIAL CONTRACT CLAUSES

Projects Not Including CA Services – Comment:

Where a project excludes the CA services, the Architect should be protected from all claims except those that are a result of a direct result of Architect's negligence.

It is not unreasonable to expect that the Client, or other parties, responsible for decisions made during the construction phase also assume the risk. It is unreasonable for the Client to expect the Architect to be responsible for activities for which they have no involvement.

Often, the risk to the Architect is not liability as much as the significant costs of defending against meritless, frivolous claims.

Comment: The following paragraphs should be included in the General Conditions:

The Architect and the Client agree that because the Architect's Basic Services do not include the Construction Phase services, the Client shall be solely responsible for interpreting the Contract Documents and observing the Work of the Architect and its Consultants, to discover, correct or mitigate errors, inconsistencies and/or omissions.

If the Client authorizes deviations, recorded or unrecorded, from the documents prepared by the Architect and its Consultants, the Client shall not bring any claim against the Architect and its Consultants. The Client shall indemnify and hold the Architect and its Consultants, its employees and agents harmless from and against all claims, losses, damages and expenses, including but not limited to, defense costs and Architect's time, to the extent such claim, loss, damage or expense arises out of, or results in whole or in part, of such deviations by the Client or parties other than the Architect.