



NECA
2013
WASHINGTON

Get Ready to Hit "Delete": Dealing With The Unreasonable Contract
October 14, 2013—8:00-8:50 AM

THREE TAKE-AWAY POINTS

1. Know which clauses you can live with if you are prepared.
2. Know which clauses you need to change if you can.
3. Know which clauses are deal-breakers.

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

1. INCORPORATION BY REFERENCE

- Terms and Conditions of General Contract
- Conflicts with Subcontract Terms
- Disputes Clauses

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

INCORPORATION BY REFERENCE CLAUSE

The Subcontractor shall be bound to the Contractor by the terms of this agreement and of the contract documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor by those documents assumes towards the Owner

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

ORDER OF PRECEDENCE CLAUSE

Subject to confirmation or approval by the Design Builder, large scale Drawings take precedence over smaller scaled Drawings, figured dimensions on the Drawings take precedence over scaled dimensions, and noted items on the Drawings take precedence over graphic representations.

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

2. MERGER CLAUSE

This Contract represents the entire agreement of the parties. No promises, warranties or representations are valid unless expressly included in the Contract Documents.

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

3. DISPUTES CLAUSES

- Choice of Law/ Choice of Venue
- Pass-through Claims

NECA 2013 WASHINGTON D.C.

CONTRACT PARAMETERS

WARRANTY CLAUSE

The Contractor warrants to the Owner that all design and installation under this Contract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards may be considered defective.

NECA 2013 WASHINGTON D.C.

RISK-SHIFTING CLAUSES

1. PAY WHEN PAID

- Contingent
- Condition Precedent

NECA 2013 WASHINGTON D.C.

RISK-SHIFTING CLAUSES

2. NO DAMAGES FOR DELAY

- Force Majeure
- Delays
- Disruptions
- Acceleration
- Interference by Owner/Others
- Breach of Contract

NECA 2013 WASHINGTON D.C.

NO DAMAGES FOR DELAY CLAUSE

The Contractor shall receive no financial compensation for delay or hindrance of the Work.

NECA 2013 WASHINGTON D.C.

PORT OF HOUSTON

No Damages for Delay Clause

The Contractor shall receive no financial compensation for delay or hindrance of the Work. In no event shall the Port Authority be liable to the Contractor or any Subcontractor . . . for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance, including events of Force Majeure, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OF THE PORT AUTHORITY. The Contractor's sole remedy in any such case shall be an extension of time.

NECA 2013 WASHINGTON D.C.

NOTICE AND WRITTEN NOTICE

Rule #1: Keep a checklist of notice clauses.

Rule #2: Know what to do when Rule #1 is not followed.

Rule #3: Don't listen when you are told to stop writing letters.

NECA 2013 WASHINGTON D.C.

NOTICE CLAUSES

1. CHANGES
2. CONSTRUCTIVE CHANGES
3. DELAYS
4. SUSPENSION OF WORK
5. UNFORESEEN CONDITIONS

NECA 2013 WASHINGTON D.C.

RISK-SHIFTING CLAUSES

3. INDEMNITY

- Personal Injury/Property Damage
- Third-Party Claims
- All Claims
- Even Where Other Party is Negligent

NECA 2013 WASHINGTON D.C.

INDEMNITY CLAUSE

Subcontractor shall defend, indemnify and hold Contractor and Owner harmless from all costs due to asserted claims or suits of others arising from Subcontractor's work, including the joint negligence of Contractor and Subcontractor or the Owner and Subcontractor.

NECA 2013 WASHINGTON D.C.

GERARD W. ITTIG, ESQ.

ITTIG & ITTIG, P.C.
WASHINGTON, DC

E-MAIL: gwi@ittig-ittig.com

NECA 2013 WASHINGTON D.C.