INDEX

Abandonment, 570
Acceleration
constructive, 386–388
elements of, 387
cost and damage proof, contractors, 388
delay causes, 386
directed, 386
generally, 311–313
Acceptance
constructive, 413
contract provisions, 401
failure to make, 416
final completion, 418
formal, 413
generally, 311–313
goods and materials, Uniform Commercial Code (UCC), 185
limitations on finality of, 416
nonconforming work, design professional (architect/engineer) inspection, 216
partial occupancy, 414
AIA A201, 417
ConsensusDocs 200, 417
EJCDC C–700, 418
federal government contracts, 414
post–acceptance facility operations, 425
project commissioning, 425–429
bonding considerations, 428
commissioning programs, 426
revocation of, 419
substantial completion, 417
Acts of God, delay causes, excusable delay, 373
Actual authority
design professional (architect/engineer)
AIA documents, 209
ConsensusDocs, 209
EJCDC, 209
inspectors, 402
special agent, 209
Adequate assurance of performance,
Uniform Commercial Code (UCC), 192
Affirmative action, employment discrimination, federal government contracts, 677
Age Discrimination in Employment Act (ADEA), 680
Air quality, environmental regulation, 599
Alternative contracting methods:
See also Building Information Modeling (BIM)
construction management (CM), 32–36
agency CM, 33
AIA documents, 33
CM/GC, 34
ConsensusDocs, 34
contingency funds and, 35
coordination duty, 35
program management, 34
safety liabilities and, 617
design–bid–build contracts, 29–30
advantages, 29
design–build attributes in, 29
disadvantages, 30
Alternative contracting methods

(Continued)
design–build contracts, 36–50
AIA documents, 37
checklist for owners, 40
code compliance, 50
ConsensusDocs 300, 37
contractor liability issues, 50, 208
DBIA documents, 43
design–builder’s perspective, 36
design professional’s liabilities, 43
interpretations clause, 49
patent defects, 50
performance specifications, 46
risk identification, 37
secondary design review, 49
shop drawings, 47
ever contractor involvement (ECI), 44
energy savings performance contracts, 45
eengineer–procure–construct (EPC), 52
design changes, 55
limitations of liability, 53
liquidated damages, 54
multiprime contracts, fast–track projects, 30–32
advantages, 30
construction manager’s role, 30
coordination duty, 35

Alternative dispute resolution (ADR)
federal government contract disputes, 810
generally, 739

Ambiguities, contract interpretation
constructive changes, 308
American Arbitration Association (AAA), 744
American Institute of Architects (AIA)
actual authority of architect, 209
agency construction management, 33
construction manager/general contractor (CM/GC), 34
payment bonds, claimant defined, 501

privity, contractual, 200
surety’s obligations, notice of claim on payment bond, 518
AIA A201 General Conditions
acceptance, 414
actual authority, of architect, 209
additional insured, CGL, 632
apparent authority, of architect, 210
arbitration, 743
architect withholding approval on certificate for payment, 220
builder’s risk, policy period, 649
changes clause, 292
compliance with permits, codes, and regulations, 206
contract changes and extras, 568
devices termination costs, 554
copyright for design documents, 243
damages, consequential, 560
default clause, 540
design–build contracts, 36
differing site conditions clause, 322
dispute resolution, owner and contractor, 739
electronic communications, 455
environmental concerns and risks, 594
evidence of financial capability, 434
extra work, cost and damage proof, contractors, 568
final completion, 418
inspection clause, 401
inspection, prompt, 409
inspections and testing, 406
insurance, standard contract clause, 630
interpretations clause, “catchall clause,” 49
mediation, 740
notice provisions, 448
patent defects, errors or omissions, 21
qualifying the project participants, 435
recoupment costs, remedies to owner, 548
safety, 617
shop drawing clause, 47
shop drawings and submittals, review and approval, 212
substantial completion, 417, 365
termination, certification of cause, 205, 542
third-party beneficiary claims, avoided, 228
time and scheduling clause, delays and extensions, 367
unanticipated hazardous materials and substances, 605
warranties, 421
written directive, claim for additional work, 296
Americans with Disabilities Act (ADA) conditions not covered, 679
disability defined, 679
reasonable accommodation, 680
Apparent authority concept contract changes, 302
design professional (architect/engineer), 210
general, 116
inspectors, 408
Arbitration: See also Dispute Resolution; Litigation agreements and procedures, 752–755
AIA A201, 744
American Arbitration Association (AAA) rules, 752
appeals, 747
arbitrator selection, 746
architect/engineer decision and, 223
Center for Public Resources (CPR) rules, 754
ConsensusDocs, 744
EJCDC C, 700, 744
enforceability of agreements, 748
enforcement of foreign arbitration awards, 103
Federal Arbitration Act (FAA), 748
informality and limited appeals, 742
International Chamber of Commerce (ICC) Rules and procedures, 754
International construction contracts, 102
multiple parties, complications of, 750
party drafted procedures, 754
rules of evidence, 747
time and cost of, 745
Architect/engineer: See Design professionals
Asbestos, environmental regulation inadvertent asbestos abatement, 601
Associated General Contractors of American (AGC) Bid shopping, position on, 162
reverse auctions for procurement of construction, 147
Bankruptcy automatic stay, 702
automatic stay violation, sanctions for, 703
bankruptcy code, 701
declarer’s contracts, status of, 710
affirmation or rejection, 711
assignment, 713
executory contracts, 710
exercise contract rights, 714
minimizing impact on executory contracts, 713
termination of contract before bankruptcy, 713
time limit, affirming or rejecting contract, 711
discharge, 709
funds, 718–726
constructive trust, 719
contract funds (earned and unearned), 719
equitable lien, 720
 guarantors, 725
joint check arrangements, 720
Bankruptcy (Continued)
  mechanic’s lien, 723
  payment bond claims, 723
  performance bond claims, 723
  recoupment, 722
  setoff, 720
  surety’s claims to, 722
  material and equipment, status of, 715–718
  property of debtor’s estate, 715
  stored materials, 717
  supplier’s right to recover goods, 716
  nondischargeable debts, 710
  bankruptcy estate, 699
  debtor, 699
  secured creditors, 699
  trustee, 699
  unsecured creditors, 699
  preferential transfers, 705
  Uniform Commercial Code (UCC), 725
  voidable preference rule, 706
  voiding unperfected security interests, 705

Bid shopping
  AGC position on, 168
  bid depository, 168
  subcontractor listing, 168

Bidding: See also Bid shopping,
  Contracts
  best value selection process, 143
  bid bonds, 165
  extent of liability, 165
  surety refusal to provide performance bond and, 167
  bid enforcement, subcontractor, 170
  bid mistakes, 152
  contractor, 157
  private contracts, 160
  relief elements, 157
  state statutes, 160
  timely notice of, 158
  withdrawal versus reformation, 161
  doctrine of promissory estoppel, 117, 170, 252–253
  damages related to, 171
  elements of, 172
  electronic bids, 145
  lowest and best bid, 140
  past performance evaluations, 149, 772–773
  challenges to, 153, 774–775
  procedures, 151
  protests, 162
  Construction State Law Matrix, 165
  federal government projects, 134
  state and local governments projects, 163
  timing of, 163
  public contracts, 133
  award preferences, 142
  resident contractor status, 116
  responsible bidder, 139
  challenges to determination, 139
  past performance and, 149
  qualifications to be, 153
  responsive bidder, 134
  competitive advantage, 135
  defects in bid bond, 136
  failure to acknowledge addenda, 136
  minor informalities and, 132
  reservations or conditions in bid, 135
  unbalanced bid, 136
  reverse bid auctions, 115, 147
  Statute of Frauds, 173
  subcontractor bids and dispute avoidance, 248–252

BIM: See Building Information Modeling

Bonds: See also Payment bonds;
  Performance bonds
  bankruptcy, 723
  bid, 165–167
  distinguished from insurance, 524–525
evidence of financial capability, 437
penal sum, 528
subcontracts, considerations, 277–278
tax, 167
Builder’s Risk insurance: See also Insurance; Commercial General Liability (CGL) insurance
all risk vs. specified risk, 634
coverage trigger, 644–645
exclusions, 650
fortuitous loss, 644–650
policy period, 649
Building Information Modeling (BIM), 56–59, 216
American Institute of Architects, 58–59
collaborative uses of BIM, 56–57
ConsensusDocs, 59
defined, 56
legal implications, 57–58
Buyer’s remedies, goods and materials, Uniform Commercial Code (UCC), 196
Capital requirements, evidence of financial ability: See also Liens
contractors, 249–250, 435–437
generally, 435–439
subcontractors, 249–250, 437
Center for Public Resources (CPR), 754
CERCLA: See Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
Certificates of progress or completion, design professional, 219–223
Change orders
Construction Change Directive, AIA A201, 304
constructive, 308–313
contractor, in subcontract, 269–270
excessive, delay causes, compensable delays, 316, 381
Federal Acquisition Regulation (FAR) clause, 242, 294–295
notification letter sample, 484–485
pricing changed work, 568–570
AIA A201, 569
ConsensusDocs 200, 569–570
EJCDC, 559
FAR, 570
written, 303–307
Changed conditions: See Differing site conditions
Change(s)
acceleration, 311–313
authority to order, 300–303
Cardinal Change, 314–316, 545
changes clause, defined, 291
common law, departure from, 291–292
purpose, 291
claims under payment bonds, 510–513
constructive changes acceleration, 311–313, 387–388
defective plans and specifications, 309–310
generally, 308
misinterpretation of plans and specifications, 213–214
impact of multiple changes, 316
impossibility/impracticability, 317–318
recovery, 297–307
authority to order, 300–303
change to work required, 298–300
generally, 297–298
notice requirement, 300–307
written change orders, 303–306
written notice of claim required, 306–307
subcontractors and, 269–270
Changes clause
American Institute of Architects, 292, 294–297
ConsensusDocs, 292–299
Changes clause (Continued)

Engineers Joint Contract Documents Committee, 294–296
Federal Acquisition Regulation, 292, 294–297
subcontract term, 269–270
Charge of discrimination, EEOC, 678
Checklists
changes clause, 269–270
contractor response to termination notice, 547–548
contracts in foreign states, 129–132
default clause, 265–267
delay claim documentation, 394
delay claim evaluation, 395–396
design–build, owner’s, 40–43
disputes, 274–276
environmental, materials encountered, 604–605
federal government projects, 276–277
indemnity clause, 271–272
labor affiliation, 273–274
notice, 476–481
payment clause, 262
pre–bid/pre–proposal environmental considerations, 360–361
qualifying project documentation, 449
qualifying project locale, 440
qualifying project participants, 435–436
qualifying the project, 433
qualifying the project site, 357–359
risk assessment, 129–132
scope of work, 258
site investigation, 356–359
Civil Rights Act, 678–679
Claim document: See also Dispute resolution
components of, dispute resolution, 736–738
federal contract disputes, 800–811
Clean Air Act, 599–600
Clean Water Act, 598–599

Code compliance
design–bid–build contracts, 50
violation, contractor recognition, 217
Commercial General Liability (CGL) insurance: See also Insurance;
Builder’s Risk insurance
addition insured status, 632–633
cost of defense, 631–632
coverage issues
care, custody, and control, 646
completed operations, 646
continuing damages, 644–645
contractual liability exclusion, 646
diminution in value, 645–646
incorrect performance of work exclusion, 647
real property exclusion, 647
“your product” exclusion, 647–648
“your work” exclusion, 648–649
deductibles, 631–632
environmental liability, 633
excess/umbrella, 632
layers of, 632
occurrence vs. claims–made coverage, 631
subrogation, 633
waiver of, 639
“third–party” insurance, 631
Common law bond, performance bonds compared with “statutory” bonds, 527
subcontracts, 277–278
Compensable delays: See Delays
Compensable work time, 668–669
Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
contribution, 597–598
generally, 594
joint and several liability, 597
potentially responsible party (PRP), 594–596
categories of, 595
described, 594
Concurrent delay: See Delays
ConsensusDocs
acceptance, 413–414, 417–418
authority, 200, 208–209, 211
Building Information Modeling, 59
changes clause, 292–296
collection of documents clauses, 38–34
copyright for design documents, 243
differing site conditions clause, 324–325
dispute resolution, owner and contractor, 223, 740, 744, 751, 753
electronic communications, 455–457
environmental risk, minimizing, 606–608, 611
generally, 441–443
inspection clauses, 401–402
inspection and testing, 217
insurance, contract requirements, 638–640
interpretations clause, “catchall clause,” 49
notice requirements, 331
patent defects, errors or omissions, 50
pay requests, adjustment, 220
payment bonds, 494
payment obligations, 259
performance bonds, 536–537
privity, contractual, 200
qualifying the project participants
contractor’s statement of qualifications for a specific project, 434, 465–474
owner and contractor, 434, 437, 465–474
safety, 620–621
shared responsibility and risk, 242–243
shop drawings, 48, 215
termination, 264, 542, 552
third-party beneficiary claims, avoided, 230
time and scheduling clauses, delays and extensions, 367–368
tri-party agreement, 37, 50

Series of documents: See Link to Wiley Website
warranties, express contractual, 421
weather, 384
written directives, change orders, claims for additional work, 303–304, 306
Consequential damages
cost and damage proof, owner, 586–587
damage principles, 560–561
Construction insurance. See Insurance;
Builder’s Risk insurance;
Commercial General Liability (CGL) insurance
Construction management: See Alternative contracting methods
Construction State Law Matrix, 10, 113–114, 165, 167, 233
Constructive acceptance
authority and, 218–219, 415–417
formal acceptance versus, 413–415
goods and materials, Uniform Commercial Code (UCC), 185–186
standard contract forms and, 413–415, 417–418
Constructive changes: See also Change orders; Changes
acceleration, 311–313, 387–388
authority and, 300–303
defective plans and specifications, 309–310
generally, 308
informal directives for extra work, 309
inspections related, 406
misinterpretation of plans and specifications, 213–214, 310–311
working under protest, 270
Consumer reporting agency, 693–695
Contract funds, constructive trust funds, 710, 719–720
Contract law, generally, 1–4
Construction State Law Matrix, 10, 113–114, 165, 167, 233
contract breach, 2
contract obligations implied, 2–4
Contract Work Hours and Safety Standards Act (CWHSSA)
Federal–aid projects, 673–676
federal government contracts, 670–673
requirements, 670–671
Contractor: See also Prime contractor; Subcontractor
authority to make changes, 270
basic responsibility for differing site conditions, 320–321
cost and damage proof, 568–584
contract changes and extras, 568–570
defective drawings or specifications, 578
inefficiency claims, 578–579
owner–caused acceleration, 577–578
owner–caused delay and disruption, 571–572
wrongful termination or abandonment, 570–571
defenses of, terminations for default, 545–547
design–build projects, 36–38, 46–50
double breasted companies, 692
environmental concerns, potentially responsible party, 593–598
implied obligations, 21–26
implied warranties, 423–424
inspection by, 411–412
liability for design, 52, 238–240
liability to, project design professional, 52, 225–232
licensing of, 110–112
past performance evaluation of, 149–157, 771–775
qualifications for project, 432–439, 465–474
qualifying to do business, 108–109
sponsorship of subcontractor claims, 284–286
standard of conduct, 7, 811–816
use of subcontractor’s bid, 167–173
enforcement of bid, 170–173
letter of intent, 152
obligations to award, 167–170, 253–254
Contracts: See also Alternative contracting methods; Bidding; Bonds; Delays; Payment bond; Payment clauses; Performance bonds; Subcontracts; Uniform Commercial Code (UCC)
acceptance of work, 219
ambiguity resolution, 20–21
bankruptcy effect on, 710–715
changes clause, 291–297
AIA A201, 292, 294
ConsensusDocs 200, 292–296
EJCDC C–700, 292, 294–296
FAR, 292, 294–296
choice of law clauses, 119
conditions on enforcement, 12–13
construed against the drafter, 20
construed as a whole, 15
creation of enforceable, 12–13
date of commencement, 365
date of completion, 365
definition of, 1–2, 12–13
differing site conditions: See Differing site conditions
duty to request clarification, 21
environmental concerns, risk minimization, 603–609
excusable delay clauses, 374–375
federal government contracts: See Federal government contracts
forum/venue selection clauses, 122, 744
goals and materials, Uniform Commercial Code (UCC), 177–198
hold harmless clauses, 121–122
implied contractual obligations, 21–26
duty to cooperate, 22–24
duty of good faith and fair dealing, 22
warranty of plans and specifications, 24–26
indemnity clauses, 122, 237
industry custom and usage, 18–19
inspection clauses, 401–403
insurance, 637–640
interpretations clause, 49
interpretation goal, 13
liquidated damages clause, 120
merger clauses, 18
no damages for delay, 119, 390–391
obligations arising by operation of law, 26
parol evidence, 17
payment clauses, 258–263
pricing of extra work
AIA A201, 296, 564
ConsensusDocs 200, 292–294, 296, 569–570
EJCDC, 294, 296
FAR, 294, 296, 570
output, 182
prior dealings, 18
privity of, 200, 514
requirements, 182
standard forms
AIA, 442
ConsensusDocs, 242, 442–443
DBIA, 443
EJCDC, 443
state laws affecting, 112–114
subcontract administration, 254–290
termination for convenience, 552–556
termination for default, 540–541
terms defined in, 14–15
third party beneficiary of, 228–229
time, 363–369
Copeland (Anti–Kickback) Act
Federal–aid projects, 674
federal government contracts, 670
Correspondence
e-mail, 451
letter log samples (incoming and outgoing), 492–493
management and documentation, 450–454
Cost accounting records
cost and damage proof, 562
management and documentation, 459–460
Costs and damages, 558–592: See also
Liquidated damages
bid related, 165
bid bond, 165–167
subcontractor refusal to honor bid, 158, 170–173
contractor’s damages, 568–584
contract changes and extras, 568–570
defective drawings or specifications, 578
differing site conditions, 343–350
home office (Eichleay) overhead, 573–577
inefficiency claims, 578–584
owner–caused acceleration, 577–578
owner–caused delay and disruption, 571–577
subcontractor/supplier refusal to honor bid, 170–173
wrongful termination or abandonment, 570–571
damage principles, 558–570
betterment, 563
causation, 562
compensatory nature of, 558–559
consequential damages, 560–561
contract provisions, 568–570
cost accounting records, 562
cost reasonableness, 570
direct damages, 559–560
mitigation of damages, 562–563
punitive damages, 561–562
torts, 559, 563–564
INDEX

Costs and damages (Continued)
generally, 558
owner’s damages, 584–591
consequential damages, 586–587
cost to complete, 584–586
delayed completion, 585
direct damages, 584–586
liquidated damages, 587–591
reduction in value, 586
termination for default, 585
pricing claims, methods for, 565–568
home office (Eichleay) overhead, 574–577
measured mile (differential studies), 581–583
modified total cost method, 567
quantum meruit method, 567–568
segregated cost method, 566
total cost method, 565–566
termination for convenience, contractor recovery, 554–556
Critical path method of scheduling (CPM)
concurrent delay, 383–383
demonstrate delay, use of, 369–372, 392–396
generally, 362–363
management and documentation, 394–396
Customs and usages, contract interpretation, 18–19

Daily reports
claim preparation, 732–733, 735–736
management and documentation, 452–453
sample documents, 484
Davis–Bacon Act
disputes, related to, 671–673, 797–799
enforcement of, 671–672
federal government contracts, 797–799
federal–aid projects, 674–675
generally, 116, 671, 674
prevailing wages under, 671–673
site of work, 671–672
state and local projects, 672
wage classifications, 671–672

Default clause, subcontract agreement, 263–267
Default, terminations for:
See Terminations

Defective plans and specifications:
See Plans and specifications

Delays, 362–398: See also
Acceleration; Critical path method of scheduling; Costs and damages; Liquidated damages;
Management and documentation apportionment of damages for, 382–383
causes of, 375–385
access problems, 376–377
acts of God, 384–385
compensable delays excusable, examples of, 375–381
concurrent delays, 382–383
defective drawings or specifications, 375–376
excessive change orders, 381
excusable delays, examples of, 383–385
failure to coordinate prime contractors, 378–379
failure to give timely orders for work, 379–380
failure to inspect, 380
failure to make timely payments to contractors, 380
failure to provide plans, approve shop drawings, 378
failure to supply materials or labor, 377
improper site preparation, 376–377
labor problems, 385
suspensions of work, 380–381
weather, 384
INDEX

compensable delays, 375–381
cumulative delay, treatment of, 382–383
modern trend, 382–383
traditional view, 382
contract time, 366–369
delay damages, 571–577, 584–591
generally, 571–572
liquidated, 587–591
overhead, 572–577
early finish, right to, 371–372
Eichleay (home office) overhead, 573–577
original decision, 574–575
subsequent limitations, 575–577
excusable delays, generally, 374–375, 383–385
excusable versus non–excusable, 373–374
final completion date, 366
final payment waiver of delay liability, 590
float in schedule, use of, 370
implied duty not to hinder or delay, 22, 364–365
liquidated damages and, 391–392, 587–591
milestone completion dates, 365
no damage for delay clauses and, 390–391
no damage for delay clauses, exceptions to, 390–391
no damage for delay clauses, statutory prohibitions, 391
non–excusable delays, 373–374
notice requirements, 388
notification letter sample, 482
payment bond claims and, 511–512
responsibility for, apportionment of, 382–383
standard contract forms, 441–445
submittal review by design professional, 216
substantial completion date and, 365–366, 590
time of essence clause and, 361–365
typical contract time and scheduling clauses, 366–369
Design–build contracts: See Alternative contracting methods
Design professional, 199–247: See also American Institute of Architects
authority of, 208–211
actual authority concept, 209–210
apparent authority concept, 210–211, 302–303
construction phase of project, 211–212
design phase of project, 208–209
implied authority concept, 210, 301–302
interpret contract documents, 213–214
ratification of design professional’s authority, 211
copyright on design documents, 243–246
design–build projects and, 36–38
inspection and testing, 216–219, 410–411
failure to inspect, 217–218, 410–411
job site accidents, 217
means and methods, 217–218
observation of defective work, 216–219
liability of contractor for design by, 50–52, 238–240
liability to contractor, 225–232
generally, 225
intentional torts, 228
negligence and “Economic Loss Rule,” 225–228
professional liability coverage, 231
third–party beneficiary, 228–230
liability to owner, 200–206
limitations on design professional liability, effects, 234–238
qualifications for project, 436
Design professional (Continued)
  shared responsibility and risk, 241–243
  shop drawings and submittals review and approval, 214–216
  notice of deviations to, 215
  review period, 215–216
  standard of care, 200–203
  supervisory and administrative functions, 211–224
  interpretation of the plans and specifications, 213–214
  issuance of certificates of progress/completion/payment, 219–223
  resolution of disputes between owner and contractor, 223–224
Differing site conditions
  allocation of risk for, 320–321
  defined, 320
  design–build contracts and, 346–348
  exculpatory clauses, 348–349
  express contract indications, recovery allowed, 334–336
  express contract indications, recovery not allowed, 336–337
  implied contract indications, 338–339
  notice requirements, 349–351
  strict compliance excused, 350–351
  operation of clause, 332–343
  generally, 332–333
  notice requirements, 331–332, 349–351
  site investigations, failure to conduct, 343–348
  Type I condition, elements of, 333–334
  Type I condition, examples, 334–339
  Type II condition, elements of, 340
  Type II condition, examples, 340–343
recovery without clause, 351–353
  breach of implied warranty, plans and specifications, 352–353
  duty to disclose, 352
  misrepresentation, 351–352
  mutual mistake, 353
  site investigation, 343–348
  checklists for, 346, 356–361
  failure to conduct, 344–346
  generally, 343
  standard clauses, 321
  AIA A201, 322–324
  clauses compared, 330–332
  ConsensusDocs, 324–325
  DBIA, 325–326
  EJCDC, 326–329
  Federal Acquisition Regulation (FAR), 322, 766
  Federal Highway Administration, 329–330
  generally, 321
  notice requirements, 331–332
Direct damages
  cost and damage proof, contractors, 566–570
  cost and damage proof, owners, 584–586
  damage principles, 559–560
Disability (Americans with Disabilities Act)
  conditions not covered, 679–680
  definition of, 679–680
  generally, 679–680
  reasonable accommodation, 679–680
  undue hardship to employees, 679–680
Discovery, litigation, 758–759
Dispute avoidance (subcontract administration), 278–288
  pricing, 248–249
  subcontractor characteristics, 249–252
Engineers Joint Contract Documents Committee (EJCDC)
acceptance, 413–414, 417–418
arbitration, 744, 751–753
changes clause, 292, 294–295
compliance with permits, codes, and regulations, 50
copyright on design documents, 243–244
damages, consequential, 559
defined terms, 14
differing site conditions clause, 326–329
environmental concerns, risk minimization, 606
generally, 443
inspection, defective work, 405
inspection, prompt, 410
inspection and testing, 216–217
interpretation clause, 49
mediation, 740
notice requirements, 331–332
patent defects, errors or omissions, 50
payment bond claimant defined, 507
performance bonds, 532, 536–537, 553, 556
privity, contractual, 200
shop drawing clauses, 48
standard contract forms, 442–443
subcontract agreement, preparation, 254–255, 259, 264
termination for convenience clauses and costs, 553, 556
Type I and Type II changed conditions, 331
warranties, express contractual, 421
Environmental concerns: See also
Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); Green building
air quality, 599–603
asbestos and lead, 600–603
commercial general liability insurance and, 633
contribution, 597–598
differing site conditions, 342
generally, 593
green buildings, 613–617
greenhouse gas emissions, 600
joint and several liability, 597
mold, 611–612
potentially responsible party ("PRP"), contractor as, 595–596
regulation and liability sources, 593–603
air quality, asbestos, and lead, 599–603
CERCLA, 594–598
storm water runoff, 598–599
risk minimization, 603–609
contract provisions and indemnification, 605–609
generally, 603
insurance, 609
pre–bid/proposal inquiry, 603–605
scope of work, 603
water quality, 598–599
Equal Employment Opportunity Commission (EEOC), 678
Equal Pay Act, 678
Equipment
bankruptcy, 715–718
failure to provide, delay causes, compensable delays, 377
payment bond claims (repair and rental), 509
Equitable lien, bankruptcy, 720: See also Liens
Estimating, management and documentation, 445–447
Evidence, demonstrative, 734–735
Excuse of performance by failure of presupposed conditions, Uniform Commercial Code (UCC)
allocation of deliveries, 195
commercially impracticable, 194–195
force majeure clause, 194
increased costs, 195
Executive Order 11246
  federal–aid projects, 674–675
  federal government projects, 683–684
Executive Order 13502 (PLAs), 673
Executive Order 13665, 683–684
Exempt employees (wage and hour laws), 665–666
Extra cost
  cost and damage proof, contractors, 568–570
  impact of multiple changes, 316
  notification letter sample, 482–483, 485–486
Extra work
  cost and damage proof, contractors, 568–570
  inspection related, 408–410
  notification letter sample, 483, 485
  payment bond claims, 510–511
  subcontractor, 268–270
Fair Credit Reporting Act (FCRA)
  background checks, 693
  generally, 693
  violations of, 693–695
Fair Labor Standards Act (FLSA), 665–669
Family and Medical Leave Act (FMLA), 687–689
Fast track projects: See Alternative contracting methods
Federal Arbitration Act (FAA), 748–749, 754–755: See also Dispute resolution
Federal government contract disputes: See also Federal government contracts
  alternative dispute resolution (ADR), 810–811
  appeal from final decision, filing of, 809–810
  deadlines, 809–810
  forum selection, 810
  process, 809–810
  attorneys’ fees recovery, 811
  certification requirements
    CDA certification requirements, 804–805
    generally, 804
    modification of claim amount, 802–803
    monetary threshold for, 804
    subcontractor claims, 806
    supporting data, 804–805
    who may certify the claim, 805
  claim(s)
    contractor, 800–811
    deadlines for submission, 802–803
    differing definitions of, 800–801
    elements of, 800–801
    government claims, 806–807
    notice requirements, 802
    who may submit, 802
    written submission requirement, 803
Contract Disputes Act (CDA), 800–811
  contracting officer’s final decision, 807–810
  contents of, 808–809
  deadlines for, 809–810
  notice requirements, 802
  Severin doctrine, 805
  sources of law relating to, 765–770
  statute of limitations, 803
  subcontractor claim certification, 806
  subcontractor claims and, 805–806
  untimely appeal, effect of, 808–810
Federal government contracts: See also
  Federal government contract disputes
  bid protests, 775–778
  default clause, terminations, 541–542
  differing site conditions, 322
  low bid award, 140–142
  notice requirements, 478–481
Federal government contracts
(Continued)
past performance evaluations, 149–157, 772–775
payment bond claims (Miller Act), 495–499
responsible bidder, 139–140
reverse bid auctions, 147–148
subcontract agreement under, 276–277
suspension of work, 380–381
Field order status chart, sample documents, 491
Financial resources, of subcontractor, subcontract administration, 249–250
“Flow–down” obligations, subcontract document, 250–257
Foreign Corrupt Practices Act, 99–102
Formal acceptance, constructive acceptance versus construction projects, 413–415
goods and materials, Uniform Commercial Code (UCC), 185–186

Green building, 613–617
design and construction issues affected by green building construction, 615–616
AIA B214, 616
generally, 613
Leadership in Energy and Environmental Design (LEED)
Accredited Professional (AP), 615–616
certification points, 613–616
certification and system, 613–614
classifications, 613
Green Building Rating System, 613–614
risk and liability, 616–617
United States Green Building Council (USGBC), 613–614, 617

Government Accountability Office
(formerly General Accounting Office) (GAO)
bid protests, 777–778
challenges to responsibility determinations, 139–140
generally, 775
relation to agency protests, 776–777
responsive bidder, 134–138

Hazardous material, and substances, regulation and liability sources, CERCLA, 594–595

Hybrid contracts, Uniform Commercial Code (UCC), 178–179

Immigration issues
“acceptable documents,” 660
Department of Homeland Security (DHS), 661–663
employer “reasonable steps” for “safe harbor” protection, 662–663
Employment Eligibility Verification Form I–9, 659–660
E–Verify system, 661–662
generally, 123, 658–659
Immigration Reform and Control Act (IRCA), 659
“no–match letter,” 662–663
public contracting, related issues, 663–664
state laws affecting, 122–123, 663–664
U.S. Citizenship and Immigration Service (USCIS), 659
U.S. Immigration and Customs Enforcement (ICE or USCIS), 659, 662–663

Implied authority concept
contract changes, 301–302
design professional (architect/engineer), 210
Implied obligations, contracts, 21–26, 279–280
Implied warranties, described, 183–184, 191–192, 423–424

Impossibility/impracticability, contract changes, 317–318

Indemnification
environmental liabilities, 605–608
generally, 122, 237
hold harmless clauses, 121–122
performance bonds, 525–527
safety, 623
subcontract agreement, 270–273
Insolvency, contracts for goods and materials, Uniform Commercial Code (UCC), 193–194

Inspection
acceptable work, rejection of, 409
authority to change requirements during, 407–408
COD shipments, 184
contractor, 412
cost of, 404–405
design professional’s role in, 410–411
disruption caused by, 409–410
failure to conduct, delay causes, 410
generally, 401–402
goods, Uniform Commercial Code (UCC), 184–185
inspector’s role in, 410–411
limitations on owner’s, 407
obligation to ensure compliance, 403
owner’s right, not duty, 405
rejection and correction, 407
scope of, 406
standard clauses, 401–403

Insurance, 627–657: See also Builder’s Risk insurance; Commercial General Liability (CGL) insurance
additional insured, CGL, 632–633
alternatives to traditional, 635–637
captive insurer, 636–637
compact response to claim, 641–643
concurrent causes of loss, 650–651
contract requirements, 637–640
types of, 630–637
Builder’s Risk, 634
Commercial General Liability, 631–633
Enterprises and omissions, 634–635
waiver of subrogation, 639

Intermittent partial strike, 690
International Chamber of Commerce (ICC), 91, 103, 754
International construction contracts:
anti–corruption policies, 99–102
compliance program, 102
Foreign Corrupt Practices Act, 99–102
contract forms, 84–92
Engineer Advancement Assoc. of Japan, 91
Federation Internationale des Ingenieurs Conseils, 90–92
International Chamber of Commerce, 91, 105
Joint Contracts Tribunal, 91
New Engineering Contract, 91
dispute resolution, 102–106
enforcement of awards/judgments, 103–104

environmental concerns, risk minimization, 633
importance of, 627–628
notice, immediate, 641
Owner Controlled Insurance Program (OCIP), 636
proof of, 639
reservation of rights, 642
routine coverage issues, 643–650
Builder’s Risk insurance, 649–650
Commercial General Liability insurance, 643–649
standard contract clauses, 637–639
AIA A201, 637–638
ConsensusDocs 200, 638
EJCDC C–700, 638–639
subrogation by insurer, 632–633
Builder’s risk, 634
Commercial General Liability, 631–633
Errors and omissions, 634–635
waiver of subrogation, 639

Notice, 641–643
International construction contracts

(Continued)

guaranty/letter of credit, 92

International Institute for the
Unification of Private Law
(UNIDROIT), 92–96

legal principles governing, 92–102

contract interpretation, 93–94

implied terms, 95

UNIDROIT Principles, 92–96

UNICITRAL model law, 96–99

project delivery methods, 89–92

engineer procure and construction
management, 91

terminology in, 92

employer, 92

programme, 92

tender, 92

variations, 92

unique issues/risks in, 87–89

United Nations Commission on
International Trade Law
(UNCITRAL), 96–99

Interpretation, contracts: See also

Contracts

ambiguities, resolution of, 20–21, 50, 298

construed as a whole, 15

contract duty to seek clarification, 21

custom and usage as aid to, 18–19

design professional (architect/
engineer) role in, 213–214

gaps in contract, Uniform
Commercial Code, 182

implied obligations and, 21, 279

implied warranties and, 24, 188, 423

order of precedence and, 16

parties’ conduct and, 19

parties’ prior dealings and, 18

payment terms, 120–121, 258–263

terms defined and, 14

general terms, 15

party defined terms, 14

technical terms, 14

Investigative consumer reports
disclosure regarding, 695

Fair Credit Reporting Act, 693
generally, 693

Joint check agreements, bankruptcy,
700, 720

Labor affiliation: See Union status

Labor problems, delay causes, 385

Laches doctrine, 422, 749

Lead, environmental regulation,
600–603

inadvertent lead–based paint
abatement, 602–603

LEED certification, 613: See also Green
building

Liability

Commercial General Liability
insurance, 631

of contractor, as designer, 50
to contractor, design professional, 225

environmental, 593: See also

Environmental concerns

limitation of, subcontract
administration, 280

payment bonds, 507

extent of, 507

waiver of, 519

performance bonds, 522

arbitration and surety’s liability,
537

extension of surety’s liability to
third parties, 528

increase in surety’s liability, 529

penal sum, 528

surety’s defenses to, payment bond
claims, 518

surety’s defenses to, performance
bond claims, 531

Licenses

Design–build contracts, 38, 110
design professionals, 207

subcontractors, evidence of
qualification, 110, 252
INDEX

Liens
enforcement, 120
equitable, bankruptcy, 720
Lien Law Online, 127
mechanic’s liens and bankruptcy funds, 723
partial lien waivers, 519
payment bond claims and, 510
payment recovery risks, 513
strict compliance with requirements, 518

Liquidated damages
benefit to contractors, 392
cost and damage proof, owners, 391–92, 582
defenses to, 372
concurrent delays, 382
final payment, 590
owner caused delays, 375
waiver, 417
EPC contract, 52, 54
generally, 391, 587
provision as penalty, 588
provision, validity of, 589
subcontracts and liquidated damages provision, 268

Litigation, 755: See also Arbitration; Dispute resolution; Federal government contract disputes
court system, 756
demonstrative evidence, 734–735, 760
discovery, 745, 758–759
electronically stored information, 461–462
generally, 755
judge or jury selection, 759
live testimony, 761
trial, 760

Management and documentation:
See also Checklists
Building Information Modeling (BIM), 56
change orders, written directives required, 303
contract framework, 441

correspondence, 448
cost accounting records, 459
daily reports/jobsite logs, 452
delay claims, 392
differing site conditions, 320
dispute resolution, contemporaneous records, 735
documentation and notice requirements, 445
electronic communications on construction projects, 455
electronic communications, industry forms, 455
AIA A201, 456
ConsensusDocs, 455
Primavera Contract Manager, 458
e-mail, 451
environmental concerns, 444, 603
estimating software vendors, 446
foreign state project concerns, 439
lines of communication, 447
meeting minutes, 451
photographs/videotapes, 454
preserving electronically stored information, 461
project documentation system, qualifying, 432
project participants, qualifying, 433
contractor/subcontractor, 249, 437
design professional (architect/engineer), 436
owner, 437
project site, qualifying, 440
project type qualifying, 432
response to termination notice, 547
risk avoidance, 445
sample documents, 465–493

correspondence logs (incoming/outgoing), 492–93
daily report, 489
field order status chart, 491
notice letters, 476
notice of backcharge, 490
Management and documentation
(Continued)
request for information, 487
telephone conversation memorandum, 488
schedules, 460
standard contract forms, 441:
See also American Institute of Architects (AIA);
ConsensusDocs; Design–Build Institute of America (DBIA);
Engineers Joint Contract Documents Committee (EJCDC)
status logs, 491
web–based project management systems, online collaboration and project management, 457
Materials and goods: See also Uniform Commercial Code (UCC)
bankruptcy, 716–17
failure to provide, delay causes, compensable delays, 373
Mechanic’s liens, bankruptcy funds, 723
Med–Arb, 752
Mediation, 740
Merger clauses, 18
Miller Act: See Payment bonds;
Performance bonds; See also Bonds
contract for construction, alteration, or repair of “public buildings” and
“public works,” 495
“dummy” subcontractors, alter egos, and joint ventures, 505
factors determining applicability, 496 generally, 121, 495
qualifying for coverage, 502
rights, waiver of, 519–521, 806
“subcontractors” and “suppliers,” 502
“substantiality and importance” of relationship with prime contractor, 504
suppliers of customized materials, 504
Misrepresentation
differing site conditions, recovery without clause, 351
surety’s defense to liability, payment bond claims, 518
Modified total cost method, pricing claims methods, 567
Mold
insurance and, 651
management plan to limit liability, 611
Multiprime contracting: See Alternative contracting methods
National Labor Relations Act (NLRA), 689
National Labor Relations Board (NLRB), 689
Negligence: See also Tort law;
Insurance
bid mistakes, relief elements, 157
design professional liability, 225
No–damages–for–delay clause
Generally, 390
limits on enforcement, 390
relationship to implied duties, 22, 390
Nondischargeable debts, bankruptcy, 710
Non–exempt employees, 665
Nonresponsive bid, described, 134
Nonsolicitation/distribution policy, 691
Nontraditional picketing, 689
Notice of backcharge work, sample documents, 490
Notice requirements:
bid mistakes, 157
changes, 306
checklists, 476
delays, claims process, 388
differing site conditions, 331
dispute resolution, 448, 731
federal contract disputes, 800, 802
management and documentation, 445
of breach, contracts for goods and materials, 185
INDEX 841

payment bond claims, 513
subcontract agreement, 269
waiver, 307

Occupational Safety and Health Act (OSHA)
compliance checks, 618
employer’s liabilities, 623
geneneral duty, 619
inspections, 618
warrants, 618

Occupational Safety and Health Review Commission, 618
Office of Federal Contract Compliance Programs (OFCCP), 681

On-call time, 668
Oral agreements, subcontracts, dispute avoidance, 252, 452
Order of precedence, contract interpretation, 16

Overtime wage, 667

Owners
acceleration caused by, cost and damage proof, contractors, 385–387, 571
bid mistakes, obligation if mistake suspected, 160
cost and damage proof
actual damages, 562, 569
consequential damages, 560
direct damages, 559, 584
generally, 558
liquidated damages, 587
damages for, termination for default, 570
defective plans and specifications, constructive change, 578
delay causes, 372
design–build projects, checklist for, 40
directed work, constructive change, 308
environmental liability of, 595
failure to coordinate multiple prime contractors, 378
inspection of work by, 405

misinterpretation of plans and specifications by, constructive changes, 310
qualifying the owner, 433
ratification by, contract changes, 303
remedies of, terminations for default, 548

safety liability of, 623
subcontractor’s claims and, 284

Partial lien waivers, pay applications and, subcontract administration, 281
Partial strike (intermittent strike), 690

Parties’ conduct, contract interpretation, 17
Past performance evaluations, 151–157, 772–775
Pay applications, partial lien waivers and, subcontract administration, 281

Payment bonds, 495: See also Miller Act
AIA A201 and AIA A312, 506
attorneys’ fees and other costs, 512
bankruptcy funds, 723
ConsensusDocs 261, 507
defined, 507
delay cost, 511
design professional (architect/engineer) representation regarding, 225
distinguished from performance bond claims, 513
EJCDC C–615, 507
extra work cost, 510
generally, 507
lien rights, 517
Little Miller Acts, 499
pay–if–paid clauses and, 518
private projects, 501
required by statute, 494
statute of limitations on claims, 515
subcontract agreement, 277
surety’s defenses to liability, 518
surety’s response to notice of claim, 517
timely notice of claims against, 513
Payment bonds (Continued)
waiver of rights, 519, 802
who may claim under, 501
work qualified for coverage, 507
Payment clauses, 259–262
pay–if–paid, 120–121, 261
payment clause checklist, 262
pay–when–paid, 120–121, 259
prevention doctrine, 261
Payment, timely, failure to provide, 258, 375
Payment obligations
construction trust funds, 121, 710
constructive trust, 719
subcontract agreement, 258
Performance bonds, 522
alternatives (Subguard), 539
arbitration, effect on surety, 537
common law v. statutory, 527
distinguished from insurance, 524
distinguished from payment bonds, 513
extension to third parties, 528
fundamentals of suretyship, 522
generally, 528
indemnification, 525
liability, 528–535
defenses to (surety’s liability), 531–532
increase in (surety’s liability), 529
Miller Act, 495
penal sum, 528
subcontract agreement, 277
surety’s entitlement to funds, 535
surety’s obligations, 528
Permits, design–build contracts, 258
Plans and specifications: See also
Spearin doctrine
adequacy of, 309
defective
constructive changes, 308
cost and damage proof, contractors, 562
delay causes, excusable
compensable delays, 373
design–build contracts, 36
failure to provide, delay causes, 375
interpretation by design professional
(architect/engineer), 213
misinterpretation by owner,
constructive changes, 310
Portal–to–Portal Act, 668
Postliminary time, 667
Preferential transfers, bankruptcy, 705
Preliminary time, 667
Prevailing wage requirements
(Davis–Bacon Act), 671
federal–aid projects, 673
federal government projects, 671
Pricing, subcontract agreement, dispute avoidance, 248
Prime contractor: See also Contractor;
Subcontractor
bid mistakes, 157
bid shopping, 167–168
duty to cooperate, 22, 279
duty to coordinate, 279
enforcement of subcontractor bid, 170
failure to coordinate or cooperate,
delay causes, compensable
delays, 22, 279, 378
subcontractor financing, subcontract administration, 258, 278
Prior dealings, contract interpretation, 18
Project commissioning, post–
acceptance facility operations, 425
commissioning programs, 426
Executive Order (EO) 13423, 427
Green Guide, 427
GSA Guide, 428
preventive maintenance, inspection,
and service program (PMIS), 426
Project Labor Agreements (PLAs), 673
Proof of insurance, contracts, 639
Protests, bids: See Bidding; Government
Accountability Office (GAO)
Public Private Partnerships (P3s):
approvals, 85
barriers to, 65
basis of awards, 66–67
challenges to, 65–66
cost–benefit analysis, 81
definition of, 62
enabling legislation, 66
building construction, 67–70
transportation, 67–70
water and utility, 67–70
participants in, 71
concessionaires, 72
construction manager, 72
design–build entity, 73
developer, 72
engineer (designer) of record, 74
operation and maintenance contractor, 74
other stakeholders, 75
payment mechanisms, 80
project financing, 76
risk allocation in, 82–85
approvals, 84
design risk (changes), 83
developer, 82
flow down, 85
non–payment, 85
unsolicited bids for, 67–70
Purchase orders, goods and materials: See Uniform Commercial Code (UCC)
Qualifications of subcontractor, subcontract administration, 249, 433
Recoupment, bankruptcy, 716
Reformation of bid, bid mistakes, 161
Rehabilitation Act, 681
Rejection of goods and materials, Uniform Commercial Code (UCC), 185
Request for information (RFI) dispute resolution, 735
environmental assessments, 605
sample document, 487
Resource Conservation and Recovery Act of 1976, 594
Responsible bidder, described, 134
Responsive bid, described, 140
Risk of loss, contracts for goods and materials, Uniform Commercial Code (UCC), 183
Safety: See also Occupational Safety and Health Act; Occupational Safety and Health Review Commission
construction managers, 622
contract provisions, 620
contractors, 619
design professionals, 621
indemnification, 605
OSHA, 618
owners, 623
responsible parties, 619
worker’s compensation and, 623
Salting (Union)
definition of, 689
employer response to union activism, 689–90
job applicants and, 689
Sarbanes–Oxley Act, 9
Secondary design review, design–build contracts, 49
Seller’s remedies, contracts for goods and materials, Uniform Commercial Code (UCC), 196
Service Contract Act of 1965 (SCA), 670
Setoff, bankruptcy, 720
Severin doctrine, subcontractor claims and, 286
Sexual harassment, 678
Shop drawings and submittals
design–build contracts, 47
failure to review/approve, delay causes, 378
review and approval of, architect/engineer, 214
Site conditions: See Differing site conditions; See also Site investigations
Site investigations
extent, 343
failure to conduct, 345
hidden conditions and, 320
qualifying the site, 439
typical clauses, 321
Site preparation, defective, delay causes, 376
Small business set–asides, 118
Spearin doctrine
constructive changes, defective plans and specifications, 309–310
contract obligations, 24, 379
defective plans and specifications, delay causes, 375–376, 379, 424, 765
delays and, 24
design–build contracts, 38
differing site conditions and, 352
warranty of plans and specifications, 24, 765
Standard of care, design professional (architect/engineer), 200
Standard of conduct, contractor, 7, 811–816
State and local governments
authority to issue changes, 300
bid protests, 162
low bidder award, 140
mistake in bids, 157
payment bond claims, 499
subcontractor claims and Severin doctrine, 286
subcontractor qualifications, 249
State, preparing to work in a new state, 108
AGC Construction State Law Matrix, 113
bonds to secure payment of taxes, 110
information sources, 127
lien/bond rights, preservation, 124
qualifying to do business, 108
required screening of personnel, 122
risk assessment checklists, 126, 433
state licensing and qualifications, 110
state statutes and policies affecting contract terms and conditions, 112, 119
Statute of Frauds, bid enforcement, 173
Statutes of limitation
contracts for goods and materials, Uniform Commercial Code (UCC)
exceptions, 181
generally, 180
modification of, 179
federal contract disputes, appeal deadlines, 809
federal contract disputes, general limitation, 803
Statutes of repose, design professional (architect/engineer) liability, 232, 234
Statutory bond, performance bonds, 527
Storm water runoff, environmental regulation, 598–599
Straight time pay, 666
Subcontract documents
AIA A401, 254–255
ConsensusDocs 700 Series, 254–255
EJCDC C–523, 254–255
Subcontractor: See also Contractor; Prime contractor; Subcontracts
bid shopping, 167–170
contractor sponsorship of subcontractor claims, 284–286
default clause, express termination rights, 263–264, 541–542
AIA A401, 263–264, 541–542
ConsensusDocs 750, 264
doctrine of promissory estoppel, 170–173
federal contract disputes, claim submission, 805–806
payment bond claims, 502–504, 510–513
proof of insurance, 639–640
qualifying, 434–436, 465–474
Index

Subcontracts
agreement preparation, 254–277
changes clause, 268–270
default clause, 263–267
delay claims, 268
disputes clause, 274–276
federal government projects, 276–277, 805–806
“flow-down” obligations, 256–257
generally, 254–256
indemnity clause, 270–273
liquidated damages provision, 591
payment bond surety and, 262–263
payment obligations, 258–263
scope of work, 257–258
standard forms, use of, 254–256
union status, subcontractor, 251–252, 273
bonding considerations, 277–278
checklists for subcontract agreements
changes clause, 269–270
default clause, 365–367
disputes clause, 274–276
indemnity clause, 271–273
labor affiliation, 273–274
payment clause, 262
scope of work, 258
dispute avoidance, 278
defective performance remedies, 282–283
delayed performance remedies, 268, 283–284
duty to cooperate, 24, 279
duty to coordinate, 24, 278–280
liability limitation, 280–281
pay applications and partial lien waivers, 281
pricing, 248–249
Severin doctrine, 286–288
subcontract bidding, 170–173, 252–253
subcontractor characteristics, 249–252
subcontractor financing and, 281–282
subcontractor’s claims and owners, 284–286
Substantial completion
acceptance of work, 417–418
effect on delay liability, 365–366
final completion compared to, 418–419
liquidated damages and, 590
Superfund: See Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); See also Environmental concerns
Suppliers, payment bond claims, 502–504
Surety: See also Payment bonds; Performance bonds
bankruptcy and, 723, 725–726
indemnity agreements, 494–495, 526
payment obligations, subcontract document, 517–521
refusal to issue bond, 167
waiver of defenses, 532
Suspensions of work: See Delays, 380–381
Termination rights, convenience,
subcontract agreement, 267–268, 553, 555–556
Termination rights, default clause,
subcontract agreement, 263–267
alternatives to termination, 264–265
consequences of improper termination, 265
express termination rights,
subcontractor default clause, 263
AIA A401, 263–264
ConsensusDocs 750, 264
implied termination rights, 264
Terminations:
AIA certification of cause, 542
checklist, contractor response to
termination notice, 547–548
ConsensusDocs, 542, 552, 555–556
cost and damage proof, contractors,
570–571
EJCDC, 553, 556
for convenience, 552–556
for default
contractor defenses, 545–548
default clauses, 541–542
grounds for, 541–545
owner remedies, 548–551
generally, 263–267, 540
subcontractors, 263–267, 542,
547–548
wrongful, damages for, 541,
570–571
Third–party beneficiary, project design
professional (architect/engineer)
liability, 228–230
Time is of the essence, 364–365:
See also Delays
Time of lawsuit, procedural
requirements, payment bond
claims, 515–516
Timely notice, procedural requirements,
payment bond claims, 513–515
Timely payments, failure to provide,
delay causes, 380
Timely work orders, failure to provide,
delay causes, 379–380
Tort law, 5–8
intentional torts, 228
applicability to construction,
177–179
buyer’s remedies, 196
contract formation under, 179–183
complete agreement not required,
180
methods of acceptance, 180
withdrawal of offer, 181–182
written contract requirement,
180–181
excuse of performance by failure
of presupposed conditions,
194–195
generally, 177–178
hybrid contracts defined, 178–179
insolvency, 193–194
inspection of goods, 184–185
modification of obligations, 179
oral agreements, 181
rejection of goods, 185
revocation of acceptance, 187
risk of loss, 183–184
seller’s remedies, 196
seller’s right to cure, 186–187
subcontract document preparation,
252
warranties
disclaimers, 189
express, 188
implied, 188–189
indemnification, relation to, 192
limitations on, 189–190
statute of limitations and
commencement of the warranty
period, 190–192
Uniform Service Employment and
Re–Employment Rights Act
(USERRA), 686–687
Veterans’ Re–Employment Rights
(VRR) Statute, 686
Union activity, 689–692
double breasted companies and, 692
Union status: See also Salting (Union)
double breasted firms, 251, 692–693
labor problems, delay causes, 385
salts, 684–690, 692
subcontractors, 251–252, 273
U.S. Bankruptcy Code, 701–710
U.S. Court of Federal Claims
bid protests, 778
federal contract disputes, 801, 807–810
U.S. Environmental Protection Agency (EPA), storm water runoff, 598
Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA), 681
Violation of bankruptcy automatic stay, sanctions, 703–704
Voidable preference rule, exceptions to, 706–709
Wage and hour laws
basic calculation, 666–667
generally, 665–666
independent contractor and, 669
overtime calculation, 667–669
Waiting and on–call time, 668–669
Warranty: See also Uniform Commercial Code; Spearin doctrine
breach of implied, differing site conditions, recovery without clause, 352–353
contract obligations, plans and specifications, 24–26
express warranties, completed work, 420–423
implied warranties, completed work, 423–424
statutory warranties, 424–425
Weather
delay causes, excusable delays, 384
inefficiency claims, cost and damage proof, contractors, 578–579
Wet or muddy conditions, as differing site condition, 334–336
Withdrawal of bid, bid mistakes, 161–162
Work orders, timely, failure to provide, delay causes, 374–380
Workers’ compensation statutes and safety
exclusive remedy limits, 695–696
liability without fault, 624
willful/intentional conduct, 624