

CONTRACT RIDER

Owner Protective Provisions

Supplemental Terms to Agreement Between Owner and Contractor

INSTRUCTIONS FOR USE:

This Rider is intended to supplement a standard form construction agreement (e.g., AIA A101/A102, ConsensusDocs, or custom form). Attach this Rider as an exhibit and include the following language in your base agreement:

"The Owner Protective Provisions attached hereto as Exhibit [] are incorporated by reference. In the event of conflict between this Agreement and the Rider, the Rider shall control."

Replace all bracketed text [like this] with project-specific information. Have legal counsel review before execution.

This Contract Rider ("Rider") supplements and amends the Construction Agreement dated [DATE] (the "Agreement") between [OWNER NAME] ("Owner") and [CONTRACTOR NAME] ("Contractor") for the project known as [PROJECT NAME] located at [PROJECT ADDRESS] (the "Project"). Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

ARTICLE 1: RIGHT TO AUDIT

1.1 Access to Records. Contractor shall maintain complete and accurate books and records relating to the Project, including but not limited to: payroll records, subcontracts, purchase orders, invoices, receipts, and correspondence. Owner and Owner's designated representatives shall have the right to inspect, audit, and copy such records at any time during the Project and for a period of three (3) years following Final Completion.

1.2 Subcontractor Records. Contractor shall include audit provisions in all subcontracts requiring Subcontractors to maintain records and provide access consistent with this Article. Upon Owner's request, Contractor shall facilitate Owner's direct audit of Subcontractor records.

1.3 Cost of Audit. If any audit reveals overcharges exceeding two percent (2%) of the audited amount, Contractor shall reimburse Owner for the reasonable costs of the audit in addition to refunding the overcharge with interest at the rate of [INTEREST RATE, e.g., 1.5%] per month from the date of overpayment.

1.4 Cooperation. Contractor shall cooperate fully with any audit, providing requested documents within ten (10) business days of request and making personnel available for interviews as reasonably required.

ARTICLE 2: CONDITIONAL LIEN WAIVERS AND RELEASES

2.1 Progress Payment Condition. As a condition precedent to each progress payment, Contractor shall provide:

- (a) A Conditional Waiver and Release on Progress Payment, executed by Contractor, covering all work and materials included in the current Application for Payment;
- (b) Conditional Waivers and Releases on Progress Payment from all Subcontractors and material suppliers who performed work or supplied materials included in the current Application for Payment; and
- (c) Unconditional Waivers and Releases on Progress Payment from Contractor and all Subcontractors and suppliers for amounts included in the previous Application for Payment.

2.2 Final Payment Condition. As a condition precedent to Final Payment, Contractor shall provide Unconditional Waivers and Releases on Final Payment from Contractor and all Subcontractors and suppliers, together with final affidavits confirming payment of all labor, materials, equipment, and other costs.

2.3 Form of Waivers. All lien waivers shall be in the form required by [STATE] law, or if no statutory form exists, in a form approved by Owner. Waivers on non-conforming forms shall not satisfy this requirement.

2.4 Owner's Right to Pay Directly. If Contractor fails to provide required lien waivers from any Subcontractor or supplier, Owner may withhold from Contractor's payment an amount equal to 150% of the disputed amount and, at Owner's option, issue joint checks to Contractor and the Subcontractor or supplier, or pay the Subcontractor or supplier directly and deduct such payment from amounts due Contractor.

ARTICLE 3: RETAINAGE

3.1 Retainage Rate. Owner shall retain [RETAINAGE PERCENTAGE, typically 10%] percent ([_]%) of each progress payment until Substantial Completion.

3.2 Substantial Completion Release. Upon Substantial Completion, Owner shall release retainage down to [POST-SUBSTANTIAL COMPLETION HOLDBACK, typically 200%] percent ([_]%) of the reasonable cost to complete all remaining Punchlist items as determined by Owner's Representative or Architect. In no event shall the retained amount be less than [MINIMUM HOLDBACK, e.g., \$50,000] Dollars (\$[]).

3.3 Definition of Substantial Completion. "Substantial Completion" means the stage when the Work is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Project for its intended purpose, as certified by the Architect. Incomplete Punchlist items shall not preclude Substantial Completion provided such items do not materially interfere with Owner's use. The determination of Substantial Completion shall be in the sole reasonable discretion of Architect.

3.4 Final Retainage Release. Final retainage shall be released no earlier than [NUMBER, typically 30-45] days after Final Completion, subject to:

- (a) Receipt of all documentation required for Final Payment under the Agreement;
- (b) Expiration of all applicable lien filing periods under [STATE] law;
- (c) Delivery of all warranties, operating manuals, as-built drawings, and close-out documents; and
- (d) Resolution of all outstanding claims, disputes, and back-charges.

ARTICLE 4: CHANGE ORDER PROTOCOL

4.1 Written Authorization Required. No change to the Contract Sum or Contract Time shall be valid unless authorized by a written Change Order signed by Owner. Contractor expressly waives any claim for additional compensation or time arising from any work performed without prior written authorization, regardless of any oral statements by Owner, Architect, or their representatives.

4.2 Pricing of Changes. All Change Orders shall be priced as follows:

- (a) **Subcontracted Work:** Actual Subcontractor cost (supported by documentation) plus Contractor markup not to exceed [GC MARKUP ON SUBS, typically 10%] percent ([]%) for overhead and profit.
- (b) **Self-Performed Work:** Actual labor cost (at rates in Schedule of Labor Rates attached as Exhibit []), actual material cost, actual equipment cost, plus Contractor markup not to exceed [GC MARKUP ON SELF-PERFORM, typically 15%] percent ([]%) for overhead and profit.
- (c) **No Markup on Markup:** Contractor shall not apply markup to Subcontractor overhead and profit. There shall be no tiered markups.

4.3 Change Order Proposals. Within [NUMBER, typically 10] business days of Owner's request, Contractor shall submit a detailed Change Order Proposal including: itemized breakdown of labor, materials, and equipment; identification of all Subcontractors performing the changed work; schedule impact analysis; and all supporting documentation. Failure to timely submit a Change Order Proposal shall constitute waiver of any claim for additional compensation or time related to such change.

4.4 Proceeding Under Protest. If Owner and Contractor cannot agree on the price or time for a change, Owner may direct Contractor to proceed on a time-and-materials basis, with Contractor's markup limited to the percentages stated above. Contractor shall maintain detailed daily records of all labor, materials, and equipment used, which records shall be submitted to Owner weekly for verification.

4.5 Credit Change Orders. For changes resulting in a net decrease to the Contract Sum, the credit shall be calculated using the same methodology as additive changes, including reduction of Contractor's overhead and profit proportional to the reduced scope.

ARTICLE 5: KEY PERSONNEL

5.1 Designated Key Personnel. Contractor represents that the following individuals shall be assigned to the Project in the capacities indicated and shall remain so assigned through Final Completion:

Project Executive: [NAME]

Project Manager: [NAME]

Project Superintendent: [NAME]

Project Engineer: [NAME]

5.2 No Substitution Without Consent. Contractor shall not remove or reassign any Key Personnel without Owner's prior written consent, which consent may be withheld in Owner's sole discretion. In the event any Key Personnel becomes unavailable due to death, disability, or termination of employment with Contractor, Contractor shall notify Owner within two (2)

business days and propose a replacement of equal or superior qualifications for Owner's approval.

5.3 Resumes on File. Contractor has provided Owner with detailed resumes for each Key Personnel. Contractor represents that such resumes are accurate and complete. Any material misrepresentation shall constitute a material breach of this Agreement.

5.4 Removal for Cause. Owner may require Contractor to remove and replace any Key Personnel who, in Owner's reasonable judgment, is not performing satisfactorily, is not cooperating with Owner or Architect, or is creating an unsafe work environment. Contractor shall effect such replacement within [NUMBER, typically 5-10] business days of Owner's written request at no additional cost to Owner.

ARTICLE 6: GENERAL PROVISIONS

6.1 Conflict with Agreement. In the event of any conflict between this Rider and the Agreement or any other Contract Document, this Rider shall control.

6.2 Severability. If any provision of this Rider is held invalid or unenforceable, the remaining provisions shall continue in full force and effect.

6.3 Governing Law. This Rider shall be governed by the laws of the State of [STATE], without regard to conflicts of law principles.

6.4 Counterparts. This Rider may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have executed this Rider as of the date first written above.

OWNER:

[OWNER NAME]

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

[CONTRACTOR NAME]

By: _____

Name: _____

Title: _____

Date: _____

IMPORTANT DISCLAIMER

This template is provided for informational purposes only and does not constitute legal advice. Construction contracts involve complex legal, financial, and technical issues that vary significantly by jurisdiction, project type, and specific circumstances.

Before using this template, you should:

- Have the document reviewed by a licensed attorney in your jurisdiction
- Verify compliance with state and local lien laws
- Confirm consistency with your base contract form
- Adjust bracketed terms to reflect your specific project requirements
- Consider whether additional provisions are needed for your project type

DeVore Consulting provides owner's representation and expert witness services but is not a law firm. Use of this template does not create an attorney-client relationship. You assume all risk associated with use of this template.

— — —

Need help negotiating your construction contract?

DeVore Consulting provides Owner's Representation services for mid-market commercial projects.