



Boilerplate A to Z: General Terms of An Agreement

Boilerplate A to Z:
General Terms of an Agreement

General Contractual Provisions that should be included in all HOA contracts:

- A. Use of "Will" and "May." "Will" is a mandatory word denoting an obligation to pay or perform. "May" is a permissive word denoting an option.
- B. Use of "Pronouns." All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, will include all other genders; the singular will include the plural and the plural will include the singular.
- C. Use of "Including." "Including," when following any general statement, term, or matter, will not be construed to limit the statement, term, or matter to the specific items or matters as provided immediately following the word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference to the word or the similar items or matters, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter.
- D. Approval. The response to any request for approval as provided in this Agreement will not be unreasonably or arbitrarily withheld, delayed, or deferred.
- E. Construction. The language used in this agreement will be construed according to the fair and plain meaning of the language, and will not be strictly construed for or against either party.
- F. Computation of Time. In computing any period of time by days as provided in this Agreement, the date of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included unless the day is a Saturday, Sunday, or federal legal holiday, in which event the period will run until the end of the next regular business day that is not a Saturday, Sunday, or federal legal holiday.
- G. Notices. All notices, requests, demands, waivers, and other communications given as provided in this Agreement will be in writing, and unless otherwise specifically provided in this Agreement, will be deemed to have been given if delivered in person, or mailed by certified or registered mail, postage prepaid, and addressed to either party at the following addresses, unless either party changes the address of either party by giving written notice to change to the other. The addresses for notice are:

- i. Notice to Association:

With copy to:

- H. Waiver; Remedies. No waiver of any default as provided in this Agreement or delay or omission in exercising any right or power either party will be considered a waiver of any other default as provided in this Agreement. No exercise or failure to exercise any right or power of either party as provided in this Agreement will be considered to exhaust that right or power. The exercise of or failure to exercise any one of the rights and remedies of either party as provided in this Agreement will not be deemed to be instead of, or a waiver of, any other right or remedy as provided in this Agreement.
- I. Time of Essence. Time is of the essence in the performance of all the terms of this Agreement.
- J. Modification. This Agreement and any term as provided in this Agreement may be modified, amended, discharged, changed, or waived only in writing signed by both parties.
- K. Binding Effect. This Agreement is binding upon, and inures to the benefit of the parties, their successors, assigns, transferees, heirs, devisees, surviving joint tenants, trustees, and personal representatives.
- L. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all previous agreements, written or oral, between parties. No statement, promise, or inducement made by either party, or the agent of a party, either written or oral, which is not provided in this agreement, is binding upon that party.
- M. Headings and Use of Terms. The section and paragraph headings to this Agreement are for convenience and reference only. The words as provided in the section and paragraph headings will not be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the terms of this Agreement. Terms defined in this Agreement have the meaning, designation, and significance ascribed to the terms defined in this agreement.
- N. Partial Invalidity. If any term of this Agreement, or the application of the term to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term to persons or circumstances other than those as to which the term is held invalid or unenforceable, will not be affected by the application, and each term of this Agreement will be valid and will be enforced to the fullest extent permitted by law.
- O. Sections, Articles and Exhibits. All references in this Agreement to paragraphs, sections, articles, and exhibits will, unless otherwise indicated, be references to paragraphs, sections, and articles of, and exhibits to, this Agreement.
- P. Counterparts. This Agreement may be signed in two or more counterparts, each of which will be deemed an original agreement, but all of which together will constitute one and the same document.
- Q. Designation of Agent. Association designates _____ as the agent of the Association for all purposes as provided in this Agreement, and the agent is authorized and empowered on behalf of Association to take all action, make all decisions, serve all notices, and otherwise act on behalf of Association as provided in the Agreement. Association may change the designated agent by giving notice of the change as provided in the Agreement.
- R. Further Assurances. The parties will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by the other to carry out the intent and purpose of this Agreement.
- S. Costs and Attorney Fees. In the event any action, suit, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement,

the prevailing party shall recover all of such party's attorney fees incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions. As used in this Agreement, attorneys fees shall be deemed to mean the full and actual cost of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual fees charged by the attorneys performing such services and shall not be limited to "Reasonable attorneys fees" as defined in any statute or rule of court.

- T. Governing Law. The validity, meaning, and effect of this Agreement will be determined as provided by the law of the State of Colorado applicable to agreements made and to be performed in the State of Colorado.
- U. Independent Contractor Status. It is the express intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer, or partner of Association. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Association and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement. Nothing in this Agreement shall authorize or empower Contractor to make any representation, warranty, or agreement on Association's behalf.
- V. Insurance - Worker Compensation. Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability.
 - i. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor and Association from claims set forth below which may arise out of or result from the Contractor's operations on the Project, and for which the Contractor maybe legally liable, whether such operations be by the Contractor, by a subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
 - a. Claims under worker's or workman's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
 - b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
 - c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
 - d. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
 - e. Claims for damages, because of injury to, destruction of, loss of use of, lost value in, or lost revenue from real or personal property;
 - f. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
 - g. Claims involving contractual liability insurance applicable to the Contractor's obligations under all sections of this Agreement to the fullest extent available in a standard Commercial General Liability Policy with Broad Form Extensions.

- 2ii. Within five (5) days of signing this Agreement and before starting any work under this Agreement, Contractor shall furnish an executed Certificate of Insurance to the Association, specifying that Contractor has obtained and will maintain required insurance coverage as set forth in Subparagraph a above from the signing of this Agreement until after the last Notice of Completion for the entire project is recorded, or Final Payment for the last building for the entire project (as that term is defined in Exhibit A), whichever occurs later. Contractor shall, within 20 days, deliver to Association a true copy of the Additional Insured Endorsement and Primary Endorsement that name Association, plus full and complete copies of the Bonds required by this Contract. Contractor's General Liability Policy shall include products liability, completed operations, and broad form contractual liability endorsements, all applicable to the Contractor's obligation under the Indemnification Provisions of Paragraph _____. Contractor's coverage shall also include full liability under Statutory Workman's Compensation Laws.
- iii. Within 30 days, Contractor shall deliver to Association a true and complete copy of each Subcontractor's Additional Insured Endorsement naming Association and Construction Manager as Additional Insureds on each Subcontractor's Liability Policy.
- iv. Certificates of Insurance, and the Policies and Endorsements thereunder, shall name Association and Construction Manager as "Additional Insureds", and this Agreement specifically requires that this "Additional Insureds" endorsements be primary. Association and Construction Manager shall remain "Additional Insured" under the policies during performance of operations by Contractor under this Agreement, and until after the last Notice of Completion for the entire project is recorded, or Final Payment for the last building for the entire project, whichever occurs later.
- v. In the event Association has not received the Certificate of Insurance and/or Endorsements within the time constraints indicated above, or in the event that during the Contractor's performance of the work under this Contract Association receives written notice from the insurer that Contractor's insurance has not been renewed or has been canceled, then it is agreed that Association may procure the insurance coverage required by this Paragraph and charge all premiums and deduct such sum from all amount due Contractor.
- vi. Contractor acknowledges that Association is relying upon the terms and conditions of this Paragraph in general and the obligation of Contractor to cause Association and Construction Manager to be named as "Additional Insureds" with respect to the insurance required by Paragraph ____ in particular, as a material part of the consideration for this Contract. The parties agree that any failure by Contractor to cause Association and Construction Manager to be named as "Additional Insureds" shall constitute a material breach of this Contract.
- vii. Contractor shall purchase and maintain adequate insurance for protection from loss or damage caused, in whatsoever manner, to equipment brought onto the site for use by the Contractor or for use of any subcontractor or by anyone directly employed by any of them, or by anyone for whose acts any of them may be liable. The Association will in no way be liable for the loss of or damage caused to any equipment brought onto the site by Contractor. Notwithstanding anything to the contrary contained in these documents, the Contractor will be responsible for insuring all materials on the job site which are not yet incorporated or built into the new structure. Association will not be responsible for any losses to these materials caused by any risk of harm.
- viii. In the event any minimal limit of insurance required by law exceeds the maximum limit of insurance specified in Subparagraph _____ below, the limitation required by law shall apply.

- a. The insurance required pursuant to this Contract is as follows:

| INSURANCE | MINIMUM LIMITS OF INSURANCE |
|--|---|
| Worker's Compensation Insurance | As determined by statute |
| All other insurance (including employer's liability) | <p>\$2,000,000 each occurrence and \$2,000,000 aggregate bodily injury and personal injury liability; and \$2,000,000 each occurrence and \$2,000,000 aggregate property damage liability</p> <p>OR</p> <p>\$2,000,000 combined single limit each occurrence and aggregate bodily injury, personal injury and property damage liability</p> |

- ix. Coverage shall be written on an occurrence basis, and shall be maintained without interruption from date of commencement of the Contractor's Work until date of final payment as set forth above and termination of any coverage required to be maintained after final payment.
- x. Certificates of Insurance acceptable to the Association shall be submitted to the Construction Manager for transmittal to the Association prior to commencement of the Contractor's Work. These certificates and the insurance policies required by this Paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to Association.
- xi. Any insurance Company writing any of the insurance described in this Paragraph must carry at least an A.M. Best Rating of "A-." If any insurance required by this Contract is through an insurance Company rated by A.M. Best as less than "A-," then Association may purchase such insurance from an A.M. Best "A" rated company and charge all premiums plus fifteen percent (15%) for overhead and deduct such sum from all amounts due Contractor.
- xii. Waiver of Subrogation. Association and Contractor waive all rights against each other and any of their Contractors, Subcontractors, Sub-subcontractors, agents and employees, and each of the other, for damages caused by fire or other perils to the extent covered by insurance provided under the Agreement or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by Association as fiduciary. The Contractor shall require of the Contractor's subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. Waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- xiii. All insurance coverage required in this Contract to be carried by the Contractor shall be primary to all insurance carried by the Association. All insurance carried by the Association, if any, shall

be excess secondary and non-contributing. Where necessary, coverage shall be endorsed to provide such primary liability.

- W. Lien Waivers. Contractor shall submit billing invoices to _____ monthly for all work performed during the previous calendar month, together with: (1) valid lien waivers for all labor and materials which are included within such billing, and (2) an affidavit duly signed by the Contractor stating upon personal knowledge that the lien waivers include all labor and materials for which a lien could be filed with respect to the building unit. However, _____ shall not be required to pay any portion of any billing invoice prior to receipt of such valid lien waivers and affidavit with respect to such invoice.
- X. Indemnity. Contractor hereby indemnifies and saves harmless Association against any and all loss, damage, liability, claims, demands, cost or expense, including attorney fees and costs of litigation, arising from or in any way attributable to the activities of Contractor or any of the Contractor's employees, Contractor's work, or Contractor's presence or activities on the site without limitation, injuries or deaths to persons and damage to property. Association indemnifies and saves harmless Contractor against any and all loss, damage, liability, claims, demands, cost or expense, including attorney fees and costs of litigation, arising from or in any way attributable to the activities of Association or any of the Association's employees, Association's work or Association's presence or activities on the site without limitation, injuries or deaths to persons and damage to property.
- Y. Setoff. Association may withhold such sums from any monies due or to become due to Contractor hereunder as Association, in its sole discretion, deems necessary to protect Association from any loss, damage, or expense relating to or arising out of Contractor's performance of the Work, or to prevent liens, or in response to any claim or threatened claim of which Association becomes aware concerning Contractor or the performance of Contractor's duties hereunder.
- Z. Conflicts. If the parties attach to this Agreement any exhibit or form prepared by Contractor, the provisions of this Agreement shall govern in the event of a conflict between this Agreement and the Contractor's exhibit or form.
- AA. Contract Documents. The contract documents consist of this Agreement, the Exhibit A Specifications, the bid documents (attached as Exhibit B), as well as all other exhibits attached to this Agreement, and made a part hereof by this reference. If there is any inconsistency between this Agreement and the Exhibit A specifications, the Exhibit B documents, and/or other exhibits, then in such event, the Agreement shall control, take precedence, and supercede over the inconsistent provisions contained in said exhibits. Additionally, the Exhibit A specifications shall take control and precedence over the Exhibit B bid documents, where any inconsistency shall occur.
- AB. Contractor Warranty. Contractor warrants to Association that all materials and equipment incorporated into the work performed under this Agreement will be the materials specified per Exhibit B hereto and all work will be of good quality, free from faults and defects, and in conformance with specifications contained in this Agreement. All work not conforming to these standards shall be considered defective.
- i. Contractor expressly warrants and guarantees all workmanship provided under this Agreement to be free of defects from material or application and fit for the purposes intended for a period of ten (10) years from the date of completion of the work at issue under this Agreement. If a defect in workmanship is discovered within the first ten (10) years following completion of the work at issue under this Agreement, Contractor warrants and agrees to remedy the defect within 48 hours after being notified of same, at no charge to Association for the costs of any materials,

supplies, labor, cost of engineering, architectural, consultation, and/or other costs related to the proper remedy for the defect.

- ii. Contractor shall assign to Association all warranties and guarantees for materials and products carrying warranty and guarantee periods, AND Contractor shall supply Association with all warranty and guarantee documents relative to materials incorporated in the job and guaranteed by their supplier or manufacturers. Specifically, Contractor agrees to comply with all manufacturer recommended instructions for installation of all materials incorporated within the work described in this Agreement. Contractor shall provide written evidence from the manufacturer, confirming that Contractor has complied with manufacturer recommended installation instructions and specifications, further assuring Association the manufacturer's warranty is in effect.

AC. Manufacturer's Warranty

- i. Manufacturer expressly warrants and guarantees all materials provided under this Agreement to be free of defects and fit for the purposes intended for a period of ten (10) years from the date of completion of the work at issue within the Development. If a defect in materials is discovered within the first (10) years following completion of the work at issue under this Agreement, Manufacturer warrants and agrees to remedy the defect after being notified by Association and at no charge to Association for the costs of any materials, supplies, labor, cost of engineering, architectural consultation, and/or costs related to the proper remedy for the defect. Manufacturer shall remedy said defect promptly and without delay.
- ii. Manufacturer agrees to inspect Contractor's work during installation to insure that application complies with all manufacturer recommended instructions for installation of all materials incorporated within the work described in this Agreement. Manufacturer shall provide written evidence confirming Contractor has complied with the manufacturer recommended installation instructions and specifications, further assuring Association the manufacturer warranty is in effect and which written evidence identifies Contractor as a certified applicator of the material. Contractor expressly agrees to act as Warrantor and Co-Guarantor of the warranty and guarantee provisions contained under this Paragraph.

AD. Arbitration. Upon written agreement of the parties, any Claim, controversy, or dispute of whatever nature arising out of or concerning this Agreement shall be resolved by final and binding arbitration according to the [Judicial Arbitration and Mediation Services (JAMS)] and their Rules of Practice and Procedure] [American Arbitration Association (AAA) and their commercial Rules of Practice and Procedure] then in effect. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. Should any party refuse or neglect to appear or participate in arbitration proceedings, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented. The arbitrator is authorized to award any party or parties such sums as he shall deem proper, including, but not limited to, costs and legal fees. The arbitration shall be binding on the parties.

AE. Termination. Either party may terminate this Agreement, with or without cause, by sending written notice to the other party at the respective address herein stated; such notice is to be given at least 30 days prior to the effective date of termination. In the event of termination of this Agreement, Contractor will be compensated for the actual services performed to the Association's reasonable satisfaction as of the date of termination. Payment will be determined by adding the accrued value of services from the commencement date of the Agreement to the termination date of the Agreement, less any payment previously made or setoff amounts provided for in the Agreement. In the event the Association has paid a higher amount, Contractor shall refund such amount within 30 days of the effective date of termination.

- AF. Exhibits. All exhibits described herein or elsewhere in the contract and attached to the contract are incorporated into the contract by this reference and shall be a part thereof.
- AG. Authority to Bind. Each party signing this contract represents it has full legal power, authority and right to execute, deliver, and perform its obligations under this contract and each party's performance hereunder and the transaction contemplated hereby have been duly authorized by all requisite actions on the part of such party and no remaining action is required to make this contract binding.
- AH. Interpretation. This contract shall be construed according to its fair meaning and as if prepared by both parties hereto. This contract shall be construed in accordance with the laws of the State of Colorado in effect at the time of the execution of the Contract. Titles and captions are for convenience only and shall not constitute a portion of this Contract. As used in this contract, masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.