



AIA[®] Document A101[™] – 2007 Instructions

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

GENERAL INFORMATION

Purpose. AIA Document A101–2007 is intended for use on construction projects where the basis of payment is a stipulated sum (fixed price). It is suitable for any arrangement between the Owner and Contractor where the cost has been set in advance, either by bidding or by negotiation.

Related Documents. This document has been prepared for use in conjunction with AIA Document A201[™]–2007, General Conditions of the Contract for Construction, which is adopted into A101–2007 by a specific reference. This integrated set of documents is suitable for most projects; however, for projects of limited scope, use of AIA Document A107[™]–2007 may be considered.

The A101–2007 document is used as one part of the Contract Documents that memorialize the Contract for Construction between the Owner and the Contractor. The other Contract Documents are:

- General Conditions (i.e., A201–2007)
- Supplementary Conditions
- Drawings
- Specifications
- Modifications

Although the AIA does not produce standard documents for Supplementary Conditions, Drawings or Specifications, a variety of model and guide documents are available, including AIA’s MASTERSPEC and AIA Document A503[™]–2007, Guide for Supplementary Conditions.

AIA Document A101–2007 is published in conjunction with the following related documents:

- A201[™]–2007, General Conditions of the Contract for Construction
- A401[™]–2007, Standard Form of Agreement Between Contractor and Subcontractor
- A503[™]–2007, Guide for Supplementary Conditions
- A701[™]–1997, Instructions to Bidders
- B101[™]–2007, Standard Form of Agreement Between Owner and Architect
- C401[™]–2007, Standard Form of Agreement Between Architect and Consultant
- E201[™]–2007, Digital Data Protocol Exhibit

Dispute Resolution—Mediation and Arbitration. Through its adoption by reference of AIA Document A201–2007, this document contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this agreement. Arbitration may be mandatory under the terms of this agreement. Arbitration is binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain circumstances (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, call the American Arbitration Association at (800) 778-7879, or visit their Web site at www.adr.org.

Why Use AIA Contract Documents. AIA Contract Documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA contract documents are flexible: they are intended

to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

Use of Non-AIA Forms. If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent among documents.

Letter Forms of Agreement. Letter forms of agreement are generally discouraged by the AIA, as is the performance of a part or the whole of the Work on the basis of oral agreements or understandings. The standard AIA agreement forms have been developed through more than 100 years of experience and have been tested repeatedly in the courts. In addition, the standard forms have been carefully coordinated with other AIA documents.

Standard Forms. Most AIA documents published since 1906 have contained in their titles the words “Standard Form.” The term “standard” is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each free to adopt different, and perhaps contradictory, laws affecting that industry—AIA documents form the basis for a generally consistent body of construction law.

Use of Current Documents. Prior to using any AIA Contract Document, users should consult www.aia.org or a local AIA component to verify the most recent edition.

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CHANGES FROM THE PREVIOUS EDITION

A101–2007 revises the 1997 edition of A101 to reflect changes made in AIA Document A201–2007. It incorporates alterations proposed by architects, contractors, owners, and professional consultants. The following are some of the significant changes made to A101™–1997.

Throughout. References in A101–2007 to the General Conditions refer specifically to A201–2007.

Article 4. New Section 4.4 provides a fill point for stating allowances included in the Contract Sum.

Article 6. The Agreement now includes a new Article 6, Dispute Resolution. New Section 6.1 provides a fill point where the Owner and Contractor may identify a neutral third-party Initial Decision Maker (IDM). If they do not appoint a third-party IDM, then the Architect will act as the IDM, as in A201–1997. Also, as in A201–1997, an initial decision is a condition precedent to mediation, and mediation is a condition precedent to any binding form of dispute resolution. However, arbitration is not mandatory under A201–2007 so the parties must select the binding method of dispute resolution from three choices: arbitration, litigation or another method that the parties must identify. New Section 6.2 provides a checkbox for selecting, or stating, the method of binding dispute resolution to be followed for any dispute not settled through mediation.

Article 9. A201–2007 encourages the Owner and Contractor to establish protocols governing the transmission of digital data on the project. For that reason, A101–2007 includes a new Section 9.1.7.1 that enumerates AIA Document E201–2007, Digital Data Protocol Exhibit, as part of the Contract Documents. If the parties do not complete AIA Document E201–2007, Section 9.1.7.1 provides a fill point for inserting the title of another document.

Article 10. A new Article 10 is added for stating bonding requirements, if any, and limits of liability for insurance, as required in Article 11 of AIA Document A201–2007.

USING A101–2007

Notices. Prospective bidders should be informed of any additional provisions which may be included in A101–2007, such as for liquidated damages or for stored materials, by an appropriate notice in the Bidding Documents and the provisions for Supplementary Conditions.

Modifications. Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments. Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions.

Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes.

Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits.

By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good-faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny.

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work, and violate the AIA's copyright.

Cover Page

Date. The date represents the date the Agreement becomes effective. It may be the date an original oral agreement was reached, the date the Agreement was originally submitted to the Owner, the date authorizing action was taken or the date of actual execution. It will be the date from which the Contract Time is measured unless a different date is inserted under Section 3.1.

Parties. Parties to the Agreement should be identified using the full address and legal name under which this Agreement is to be executed, including a designation of the legal status of both parties (sole proprietorship, partnership, joint venture, unincorporated association, limited partnership or corporation [general, limited liability, closed or professional], etc.). Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached. Other information may be added, such as telephone numbers and electronic addresses.

Project. The proposed Project should be described in sufficient detail to identify: (1) the official name or title of the facility; (2) the location of the site; and (3) a brief description of the Project, including the proposed building usage, size, and capacity or scope of the Project.

Architect. As in the other AIA Contract Documents, the Architect's full legal or corporate title should be used.

Article 2 The Work of This Contract

If portions of the Work are to be performed by persons or entities other than the Contractor, these should be indicated in the Supplementary Conditions.

Article 3 Date of Commencement and Substantial Completion

The following items should be included as appropriate:

§ 3.1 The date of commencement of the Work should be inserted if it is different from the date of the Agreement. It should not be earlier than the date of execution (signing) of the Agreement. After the first sentence, enter either the specific date of commencement of the Work, or if a notice to proceed is to be used, enter the sentence, “The date of commencement shall be stipulated by the notice to proceed.” When time of performance is to be strictly enforced, the statement of starting time should be carefully weighed.

§ 3.3 The time within which Substantial Completion of the Work is to be achieved may be expressed as a number of days (preferably calendar days) or as a specified date. If a specified date is used and the date of commencement is to be given in a notice to proceed, these dates must be carefully coordinated to allow sufficient time for completion of the Work. Any requirements for earlier Substantial Completion of portions of the Work should be entered here.

Optionally, insert any provisions for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion. Liquidated damages are not a penalty to be inflicted on the Contractor, but must bear an actual and reasonably estimable relationship to the Owner’s loss if construction is not completed on time. There is little or no legal precedent to support the proposition of linking a bonus with a penalty. If liquidated damages are to be assessed because delayed construction will result in actual loss to the Owner, the amount of damages due for each day lost should be entered in the Supplementary Conditions or the Agreement. Factors such as confidentiality or the need to inform subcontractors about the amount of liquidated damages will help determine the placement of such language. If provision for liquidated damages is included, it should be carefully drafted by the Owner’s attorney. Such a provision may be based on the following sample language:

“The Contractor and the Contractor’s surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: _____ Dollars (\$ _____).”

For further information on liquidated damages, penalties and bonus provisions, see AIA Document A503–2007, Guide for Supplementary Conditions.

Article 4 Contract Sum

§ 4.1 Enter the Contract Sum payable to the Contractor.

§ 4.2 Identify any alternates described in the Contract Documents and accepted by the Owner. If bidding or proposal documents permit the Owner to accept other alternates, subsequent to this document’s execution, attach a schedule showing the amount of each alternate and the date it expires.

§ 4.3 Identify unit prices and state quantity limitations, if any, to which the unit price will be applicable.

§ 4.4 Identify and state the amount of any allowances.

Article 5 Payments

§ 5.1.2 Insert the time period covered by each Application for Payment if it differs from the one given.

§ 5.1.3 Insert the time schedule for presenting Applications for Payment, and indicate due dates for making progress payments. The last day upon which Work may be included in an Application should normally be no less than 14 days prior to the payment date, in consideration of the 7 days required for the Architect’s evaluation of an Application and issuance of a Certificate for Payment and the time subsequently accorded the Owner to make Payment in Article 9 of A201. The Contractor may prefer a few additional days to prepare the Application. Due dates for payment should be acceptable to both the Owner and Contractor. They should allow sufficient time for the Contractor to prepare an Application for Payment, for the Architect to certify payment, and for the Owner to make payment of the Architect’s certified amount. They should also be in accordance with time limits established by this Article and Article 9 of A201–2007.

§ 5.1.6.1 Indicate the percent retainage, if any, to be withheld when computing the amount of each progress payment. The Owner frequently pays the Contractor the bulk of the earned sum when payments fall due, retaining a percentage to ensure faithful performance. These percentages may vary with circumstances and localities. The AIA endorses the practice of reducing retainage as rapidly as possible, consistent with the continued protection of all affected parties. See AIA Document A503–2007, Guide for Supplementary Conditions, for a complete discussion.

§ 5.1.6.2 Insert any additional retainage to be withheld from that portion of the Contract Sum allocable to materials and equipment stored at the site. Payment for materials stored off the site should be provided for in a specific agreement and enumerated in Section 8.6. Provisions regarding transportation to the site and insurance protecting the Owner's interests should be included.

§ 5.1.8 Describe any arrangements to reduce or limit retainages indicated in Sections 5.1.6.1 and 5.1.6.2, if not explained elsewhere in the Contract Documents. A provision for reducing retainage should provide that the reduction will be made only if the Architect judges that the Work is progressing satisfactorily. If the Contractor has furnished a bond, demonstration of the surety's consent to reduction in or partial release of retainage must be provided before such reduction is effected. Use of AIA Document G707A™–1994 is recommended.

§ 5.2.2 Insert the date by which Owner shall make final payment, if it differs from the one stated. When final payment is requested, the Architect should ascertain that all claims have been settled or should define those which remain unsettled. The Architect should obtain the Contractor's certification required by Article 9 of A201–2007 and must determine that, to the best of the Architect's knowledge and belief and according to the Architect's final inspection, the requirements of the Contract have been fulfilled.

Article 6 Dispute Resolution

§ 6.1 In this section, the Owner and Contractor may identify an Initial Decision Maker to render initial decisions on claims arising between them. If the parties do not identify an Initial Decision Maker, then the Architect will provide initial decisions.

§ 6.2 Select from three choices of binding dispute resolution: (1) arbitration, (2) litigation or (3) another method that the parties must identify. Other types of dispute resolution include a dispute resolution board or a mini-trial. For additional information about other methods of dispute resolution, refer to *The Construction Industry's Guide to Dispute Avoidance and Resolution*, free online at www.adr.org.

Article 8 Miscellaneous Provisions

§ 8.2 Enter any agreed-upon interest rate for overdue payments.

§ 8.3 Identify the Owner's representative and indicate how that person may be contacted.

§ 8.4 Identify the Contractor's representative and indicate how that person may be contacted.

§ 8.6 Insert other contract provisions here.

Article 9 Enumeration of Contract Documents

A detailed enumeration of all Contract Documents must be made in this article. List additional documents in Section 9.1.7 that will form part of the Contract Documents.

EXECUTING THE AGREEMENT

The persons executing the Agreement should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.