



AIA[®] Document A401[™] – 2007 Instructions

Standard Form of Agreement Between Contractor and Subcontractor

GENERAL INFORMATION

Purpose. AIA Document A401–2007 establishes the contractual relationship between the Contractor and Subcontractor. This document adopts by reference AIA Document A201[™]–2007, General Conditions of the Contract for Construction, and a pre-existing Prime Contract between the Contractor and Owner. The completed A401–2007 document will thus form an Agreement whereby the duties and responsibilities of the Contractor under the Prime Contract pass to the Subcontractor with respect to a portion of the work designated in the completed A401–2007 document.

Related Documents. This document has been prepared for use with a Prime Contract which may be based upon the latest editions of one or more of the AIA A-Series documents, especially those that relate to and adopt AIA Document A201–2007, General Conditions of the Contract for Construction. If another general conditions document will be used, A401–2007 will have to be modified to refer to that general conditions document instead of AIA Document A201–2007.

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 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

A401–2007 revises the 1997 edition of A401 to reflect changes made in AIA Document A201–2007. It incorporates alterations proposed by subcontractors, architects and other interested parties. The following are some of the significant changes made to A401–2007.

Throughout. References in A401–2007 to the General Conditions refer specifically to A201–2007.

Article 1. The Contractor shall now make available the Subcontract Documents to the Subcontractor prior to execution of this Agreement, and thereafter upon the Subcontractor's request.

Article 2. Previous Section 2.2 is relocated to Section 4.1.1.

Article 3

§ 3.2.6 The Contractor shall now promptly make available to the Subcontractor all information related to a claim involving the Subcontractor's work.

§ 3.3.2 This section is rewritten to add clarity.

§ 3.4 Two notice periods of three working days each are now collapsed into a single notice period of five working days.

Article 4

§ 4.1.1 The Subcontractor now has an affirmative duty to enter into written agreements with Sub-subcontractors performing Work under this Subcontract.

§ 4.3.5 The Subcontractor now has a duty to indemnify the Contractor for costs associated with the Subcontractor's negligent handling of materials or substances, or the Subcontractor's failure to perform its duties when it encounters a hazardous material.

Article 6. As in A401™–1997, mediation is a condition precedent to any binding form of dispute resolution. However, arbitration is not mandatory under A401–2007 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. If the parties select arbitration, they may consolidate arbitrations according to a new rule set forth in Section 6.3.3.

Article 7

§ 7.2.1 The seven-day period for correction of the Work followed by a second seven-day notice period is collapsed into one ten-day cure period before the Contractor may terminate the Subcontract and finish the Subcontractor's Work.

§ 7.4.1 If the Owner terminates the Prime Contract for cause, then this Subcontract will now be assigned to the Owner pursuant to Section 5.4 of A201–2007, General Conditions of the Contract for Construction, if the Owner accepts the assignment.

Article 9. A definition of Subcontract Time is added in Section 9.1.

Article 10. Allowances are now included in the Contract Sum in new Section 10.4.

Article 11

§ 11.3 The period of time for the Contractor to pay the Subcontractor for each progress payment has changed from three working days to seven working days after payment is received from the Owner, to correspond to section 9.6.2 of A201–2007.

§ 11.5 The Subcontractor's duty to provide a schedule of values prior to the Subcontractor's first application for payment is relocated to this section from former Section 4.1.3 in A401–1997.

Article 12. A201 Section 9.10.5 regarding the Subcontractor's waiver of claims at final payment, except those in writing and identified as unsettled at the time of the final application for payment, is now set forth in Section 12.2.

Article 13. The Subcontractor is now required to carry insurance for its completed operations. The Subcontractor's commercial liability policy must include the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds during operations, and the Contractor as an additional insured during completed operations.

USING A401-2007

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 that an oral agreement was reached, the date the Agreement was originally submitted to the other party, the date authorizing action was taken or the date of actual execution. It will be the date from which the Subcontract Time is measured unless a different date is inserted under Section 9.1.

Parties. Parties to this Agreement should be identified using the full legal name under which the 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.

Prime Contract. The date of the Agreement between the Owner and Contractor should be entered.

Owner. The name and address of the Owner should be the same as used in the Prime Contract.

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, the size, and capacity or scope of the Project.

Architect. The Architect's full legal or corporate titles should be used.

Article 6 Mediation and Binding Dispute Resolution

§ 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 9 Date of Commencement and Substantial Completion

§ 9.1 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 of the Agreement. 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."

§ 9.3 The time within which the Subcontractor shall substantially complete the Work may be expressed as a number of calendar days or as a specified date.

Also insert any provisions for liquidated damages relating to the Subcontractor's failure to complete on time. Liquidated damages are not a penalty to be inflicted on the Subcontractor, but must bear an actual and reasonably estimable relationship to the Contractor's loss if construction is not completed on time. If liquidated damages are to be assessed because delayed construction will result in actual loss to the Contractor, the amount of damages due for each day lost should be entered in the Agreement. If a provision for liquidated damages is included, it should be carefully drafted by an attorney. Such a provision may be based on the following sample language:

"The Subcontractor and the Subcontractor's surety, if any, shall be liable for and shall pay the Contractor 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 10 Subcontract Sum

§ 10.1 Enter the Subcontract Sum payable to the Subcontractor.

§ 10.2 Identify any alternates described in the Subcontract Documents and accepted by the Owner and the Contractor. If decisions on alternates are to be made subsequent to execution of A401–2007, attach a schedule showing the amount of each alternate and the date it expires.

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

If unit prices are not covered in greater detail elsewhere in the Subcontract Documents, the following provision for unit prices is suggested:

"The unit prices listed below shall determine the value of extra Work or changes in the Work, as applicable. They shall be considered complete and shall include all material and equipment, labor, installation costs, overhead and profit. Unit prices shall be used uniformly for additions or deductions."

§ 10.4 Identify and state the amount of any allowances.

Article 11 Progress Payments

§ 11.2 Insert the time period covered by each application for payment if it differs from the one given.

§ 11.3 Insert the time schedule for presenting applications for payment. Due dates for payment should be acceptable to both the Contractor and Subcontractor. 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. They should also be in accordance with the time limits established by this article and Article 9 of A201–2007.

Article 13 Insurance and Bonds

§ 13.1 Insert types of coverage and limits of liability to be maintained by the Subcontractor which may arise out of or result from the Subcontractor's operations and completed operations under the Subcontract.

§ 13.7 If the Subcontractor is to furnish a performance bond and a payment bond, insert specific requirements such as amounts, the date the bonds are required to be delivered and the forms on which the bonds are to be written. See AIA Document A312™–1984, Performance Bond and Payment Bond, which may be modified for a contractor-subcontractor relationship.

Article 14 Temporary Facilities and Working Conditions

§ 14.1 List temporary facilities, equipment and services the Contractor will not furnish to the Subcontractor.

Article 15 Miscellaneous Provisions

§ 15.3 Indicate the percent of retainage, if any, to be withheld when computing the amount of each progress payment to the Subcontractor, as well as any provisions for reduction of retainage prior to substantial completion of the Subcontract Work.

Article 16 Enumeration of Subcontract Documents

A detailed enumeration of all Subcontract Documents must be made in this Article.

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.