



## INTRODUCTION

**ASA Model General Conditions Matrix.** The ASA Model General Conditions Matrix compares form general conditions for construction contracts according to appropriate issue categories. The matrix also states Model General Conditions Best Practices for each issue category. The contents of the matrix were developed by ASA's Task Force on Model General Conditions (2002-2004) to serve as a tool and a guide for ASA task forces charged with providing input to industry organizations that publish form construction subcontracts, and any part of it is always subject to revision by those same task forces. Consequently, each page of the matrix is dated as of the last revision.

**Documents Reviewed.** Issues categories are treated alphabetically. The following documents are reviewed:

- **AIA A201-1997.** The *General conditions of the Contract for Construction* published by the American Institute of Architects (AIA) is designated the A201-1997.
- **AGC 200 (2000).** The 2000 edition of the *Standard Form of Agreement and General Conditions Between Owner and Contractor (Where the Contract Price is a Lump Sum)* published by the Associated General Contractors of America (AGC) is designated the AGC 200.
- **DBIA 535 (1998).** The 1998 edition of the *Standard Form of Agreement Between Owner and Design-Builder* published by the Design Build Institute of America (DBIA) is designated the DBIA 535.
- **EJCDC 1910-8 (1990).** The 1990 edition of the *Standard General Conditions of the Construction Contract* published jointly by the members of the Engineers Joint Contract Documents Committee is designated the EJCDC 1910-8.
- **CMAA A-3 (2002).** The 2002 edition of the *General Conditions of the Construction Contract Between Owner and Contractor* published by the Construction Management Association of America, Inc., is designated the CMAA A-3.
- **AOD 2002GC.** The 2002 edition of the *Standard Form of Agreement Between Owner and Contractor for a Fixed or Lump-Sum Price* published by the Associated Owners and Developers is designated the AOD 2002GC.
- **COAA B-200GC (2000).** The 2000 edition of the *Contract for Construction, Chapter 2, Builder's Required Services and General Terms and Conditions (General Contractor's Fixed Price Form)* published by the Construction Owners Association of America, Inc., is designated the COAA B-200GC.

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**TOPICS ARE TREATED ALPHABETICALLY**

**ADMINISTRATION**

<p>EJCDC 1910-8 (1990)  (I) Engineer disclaims any duty to Contractor, ¶¶ 3.3, 3.4, 9.2, 9.13, 14.6, but issues all communications from Owner to Contractor. ¶ 8.1.  (a) Engineer controls payment and completion certificates, ¶¶ 9.6, 9.8, 9.9, 9.11, 14.4, change orders. ¶ 10.4. Engineer’s written interpretations bind Owner. ¶ 9.4.  (b)  (c) may issue a field order requiring minor change in Work without time or price adjustments. ¶¶ 1.19, 9.5.  (II) Contractor must have superintendent. ¶ 6.2.</p>	<p>AIA A201-1997  (I) Architect:  (a) controls payment and completion certificates, change orders, but no authority to bind owner. ¶¶ 2.1.1, 4.2.2, 4.2.5, 4.2.6, 4.2.8, 4.2.9, 9.2.1, 9.3.1, 9.4.1.  (b) term continues for one-year after Substantial Completion. ¶ 4.2.1.  (c) may order a “minor change in the Work” unilaterally. ¶¶ 7.1.2, 7.4.1.  (II) Contractor: must appoint a “superintendent” ¶ 3.9.1</p>	<p>DBIA 535 (1998)  (I) Owner’s Representative: ¶ 3.4.1. Owner controls payment and completion certificates ¶ 6.6.  (II) DBer’s Representative must have power to bind DBer, and can’t be changed without Owner agreement. ¶ 2.1.1. DBer must have a dedicated Safety Representative responsible for daily inspections, weekly safety meetings, and monitoring of all safety programs on the site. ¶ 2.8.1.</p>	<p>AOD 2002GC  (I) Owner’s Representative is separate from Owner’s Senior Representative, and owner may hire consultants to review submittals, etc. ¶¶ 1.2.1-1.2.3.  (II) Contractor must have a superintendent. ¶ 5.2.1.</p>	<p>AGC 200 (2000)  (I) Owner representative: ¶ 4.7.  A/E designation: ¶ 3.15.  Payment applications, submittals, notice of substantial completion forwarded to A/E “if directed.” ¶ 9.2.1, 3.14.1, 9.6.1.  (II) Contractor or must appoint representative. ¶ 3.4.4.</p>	<p>CMAA A-3 (2002)  (I) All communications through CM who has “full authority,” ¶¶ 2.1.1, 2.1.2, 2.1.10, 2.1.12 3.1.6, 11.2.4, 11.3.1, must authorize changes (¶¶ 9.2.1) and may authorize “minor variations,” ¶¶ 2.1.5, 9.1.1 (<b>but see</b> ¶ 9.2.5, apparently authorizing CM to make scope changes), but numerous disclaimers: ¶¶ 1.1.20 (may not sue CM), 1.1.23 (CM standard of care), 2.1.1 (CM “agent” not “fiduciary”).  (II) Contractor must identify representatives, ¶ 2.1.3, and superintendent. ¶ 4.3.2.  (III) Designer provides professional services, reviews submittals. ¶¶ 2.1.11, 3.1.3.</p>	<p>COAA B-200GC (2000)  (I) “Professional”:  (a) Represents the owner on all design and technical matters, ¶¶ 6.2, 11.2, and controls payment and completion certificates and change orders. ¶¶ 9.3, 11.3, 11.4, 11.5, 11.8, 11.9  (b) term continues for one-year after Substantial Completion. ¶ 11.1.  (II) Contractor must name a “Builder’s Representative” to serve as “primary communication contact.” ¶ 4.1.1.</p>
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**ASA Model General Conditions Best Practices for ADMINISTRATION:** Clear lines authority to authorize payments and changes must be established in the general conditions.

**ATTORNEYS’ FEES AND COSTS** (¶ 24 of the ASA Addendum to Subcontract (2004))

<p>EJCDC 1910-8 (1990)  Owner to collect fees if Contractor is terminated for default. Contractor collects fees connected with</p>	<p>AIA A201-1997  No</p>	<p>DBIA 535 (1998)  No provision.</p>	<p>AOD 2002GC  No provision.</p>	<p>AGC 200 (2000)  No provision.</p>	<p>CMAA A-3 (2002)  No provision.</p>	<p>COAA B-200GC (2000)  No provision.</p>
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termination of subcontracts if contract is terminated for convenience. ¶¶ 17.5 15.2, 15.4.3.	provision.					
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**ASA Model General Conditions Best Practices for ATTORNEY'S FEES AND COSTS:** The prevailing party in any dispute arising out of a construction contract should be entitled to attorney's fees and costs. Terms only requiring payment of an owner's attorney's fees in the event of a contractor's default are one-sided and must be avoided. Terms that permit fees only for designated dispute resolution procedures may exclude other lawful collection procedures and should also be avoided.

**BACKCHARGES** (¶ 26 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990) Owner must give 7 days notice before correcting defective work. ¶ 13.14.	AIA A201-1997 Owner can deduct clean-up costs without notice. ¶ 3.15.2, 6.3.1. Dual notices required before owner may backcharge for correction of defects. ¶ 2.4.1.h. Owner may accept non-conforming work and take price reduction "as appropriate and equitable." ¶ 12.3.1.	DBIA 535 (1998) Dual notices required before owner may backcharge for correction of defects, except in "an emergency." ¶ 2.10.2, compare ¶ 11.2.2.	AOD 2002GC Owner may deduct clean up costs without notice. ¶ 5.4.3. Owner must give 7 days notice to backcharge for correction of defective work. ¶ 5.8.1.	AGC 200 (2000) Owner must give 48 hours notice before deducting clean-up costs. ¶ 3.19.2. Owner must give "prompt" notice of deficiencies and allow Contractor to correct (no explicit right to correct and backcharge!). ¶ 3.9.1. Owner may accept non-conforming work, with contractor's agreement, and take "equitable" price reduction. ¶ 3.9.7. Corrective safety measures: ¶ 3.11.6. Damage to owner-furnished materials: ¶ 3.6.	CMAA A-3 (2002) Owner may backcharge clean up costs "as provided in [nonexistent] Paragraph 6.3" ¶ 4.6.2. Owner must give 7 days notice to backcharge for correction, and has right to suspend and complete work with Contractor's equipment. ¶ 2.3.1. Owner may accept nonconforming Work and take price reduction plus "direct, indirect and consequential costs attributable to ... evaluation of and determination to accept such work..." ¶ 10.4.1.	COAA B-200GC (2000) Owner can deduct clean-up costs without notice ¶3.11. Owner can backcharge for correction of deficiencies 7 days after Owner suspension for failure to correct work, ¶ 23.1.3, or 7 days after notice to cure, ¶ 24.1.2.
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**ASA Model General Conditions Best Practices for BACKCHARGES:** Expenses claimed as backcharges should not be incurred before notice, and reasonable opportunity to cure, are provided to a contractor. Backcharges must be billed within a reasonable time and not saved until the end of the project.

**BONDS: see LIEN RIGHTS, WAIVERS**

**CHANGES: see CLAIMS**

**CLAIMS** (¶¶ 7 and 8 of the ASA Addendum to Subcontract (2004)) **also see SITE INSPECTION - DEADLINES**



**- TIME ADJUSTMENTS  
- PRICE ADJUSTMENTS**

<p>EJCDC 1910-8 (1990) <b>Deadlines:</b> Claim required “promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto,” ¶¶ 9.11, 11.2, 12.1, cf. ¶ 17.3 (“reasonable time”). <b>Time Adjustments:</b> As determined by Engineer unless appealed, ¶¶ 9.11, 12.1, for “delay beyond the control of Contractor,” ¶ 12.3. <b>Price Adjustments:</b> Unit prices if agreed, or Cost of the Work plus Contractor’s fee for overhead and profit. ¶¶ 11.3, 11.4 (allowable costs), 11.5</p>	<p>AIA A201-1997 <b>Deadlines:</b> Claim required 21 days after recognition of a condition giving rise to a claim. ¶ 4.3.2, 4.3.4, 4.3.8. <b>Time Adjustments:</b> Time extended for “such reasonable time as the Architect may determine,” for causes “beyond the Contractor’s control.” ¶¶ 8.3.1. Weather conditions, see ¶ 4.3.7.2. Emergencies: ¶ 10.6.1.</p>	<p>DBIA 535 (1998) <b>Deadlines:</b> Claims must be made, “if possible,” before any cost or expense is incurred. Otherwise, notice required “within a reasonable time not to exceed twenty-one (21) days ... after the party reasonably should have recognized the condition giving rise to a claim. ¶ 10.1.1. <b>Time Adjustments:</b> Time “reasonably extended” for events and circumstances “beyond [Contractor’s] control, including changes, differing site conditions, floods, labor disputes, “unusual delay in transportation,” “adverse weather conditions not reasonably anticipated,” others. ¶ 8.2.1. Emergencies: ¶ 9.5.1. Owner suspension of work: ¶ 11.1.2. <b>Price Adjustments:</b> Time only for changes “beyond the control of both Design-Builder and</p>	<p>AOD 2002GC <b>Deadlines:</b> Menu of choices, but default option is 10 days after Contractor knew “or reasonably should have known” of a claim incident. ¶ 8.2.7. Time extended 10 days on written request. ¶ 8.2.8. Specific notice required if Owner’s decision on change request required within 30 days to avoid delay. ¶ 7.2.3. Objection to adjustment provided in change directive: ¶ 7.4.5. To claim adjustment for field directive: ¶ 7.5.3. Claim for “constructive acceleration” is waived until date notice of claim is given to Owner. ¶ 8.5.6. <b>Time Adjustments:</b> Time extended for “Excusable Delay” (¶ 8.4.1) defined as delay Contractor did not cause and could not reasonably avoid (¶1.4(j)) Definition of “Abnormal Adverse Weather Conditions” refers to “climatic</p>	<p>AGC 200 (2000) <b>Deadlines:</b> “Immediate” notice to owner required for “recordable accidents and injuries.” ¶ 3.11.3. Contractor must give notice of delay claims (¶ 6.4) and other claims within 14 days after recognition of a condition giving rise to a claim. ¶ 8.4. <b>Time Adjustments:</b> Time “equitabl[y]” extended for “any cause beyond the control of the Contractor” including “decisions of the Owner ..., labor disputes not involving the Contractor,” fire, weather, others. ¶ 6.3.1. No adjustment for owner-requested corrective safety measures. ¶ 3.11.6. Emergencies: ¶ 3.12.1. Adjustments for owner requested</p>	<p>CMAA A-3 (2002) <b>Deadlines:</b> Change requests required with 5 days “after the beginning of the occurrences of the event [sic]giving rise to the request,” or Contractor “shall have waived any and all rights it may have against the Owner.” ¶ 9.2.3. Details as required by CM (¶ 9.3.5). <b>Time Adjustments:</b> For adjustment, change must affect critical path. ¶¶ 9.2.5, 9.4.1, 9.4.2. Inclement weather claims measured</p>	<p>COAA B-200GC (2000) <b>Deadlines:</b> “Incidents” must all be reported “immediately.” ¶ 3.8, see also. ¶16.2. Notice of delay required within 7 days of “the beginning of any such delay,” ¶ 17.4, or 3 days after “first observance” for “concealed /unforeseen conditions.” Contractor must “promptly” request any extensions of time. ¶ 16.3. Written notice of claims based on changes required. ¶ 9.6. <b>Time Adjustments:</b> No extension of time unless Contractor “would have otherwise been able to timely</p>
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<p>(excluded costs), 11.6 (overhead and profit based on specified percentages), 11.8 (allowances excluded).. For Owner failure to furnish lands, rights-of-way, easements: ¶ 4.1. Unit price adjustments where quantity “differs materially and significantly,” ¶ 11.9.3.1.</p>	<p><b>Price Adjustments</b> : Costs plus “reasonable allowance for overhead and profit.” ¶¶ 7.3.6, 7.2.2. Interim payment for undisputed amounts: ¶ 7.3.8. Same for claims based on emergency costs. ¶ 10.6.1. For changes in unit prices due to changes in quantities, see ¶ 4.3.9. Owner suspension of work: ¶ 14.3.1.</p>	<p>Owner.” ¶ 8.2.2. Allowance for overhead and profit. ¶ 9.4.1.4. For cost of estimating a change, see ¶ 9.1.3. For changes in unit prices due to changes in quantities, see ¶ 9.4.2. Emergencies: ¶ 9.5.1. Owner suspension of work: ¶ 11.1.2. Where cost is in dispute, or where scope of Work is in dispute, Owner must pay 50% of Contractors estimated costs on application. ¶ 9.4.3..</p>	<p>records.” ¶ 1.4.1(a). <b>Price Adjustments:</b> Menu for limit on / bar against overhead for claims based on excusable delay: ¶ 8.4.3. Blanks for entry of percentage mark-up limits permitted to Contractor and subs: ¶¶ 7.1.4, 7.1.5. But, Owner may attempt to fix another pricing mechanism in a change directive. ¶¶ 7.4.4, 7.4.5, 7.4.8. Any other claims related to changes are waived. ¶ 7.3.3. Payment for “undisputed portions” of any claim: ¶ 6.4.6. Change in unit prices “due to gross mistakes”: ¶ 7.4.7.</p>	<p>sequence changes: ¶ 6.2.2. <b>Price Adjustments:</b> Time and actual costs only for weather, fire, “unusual transportation delays, general labor disputes ... not specifically related to the Worksite....” ¶ 6.3.2. None permitted for owner-requested corrective safety measures. ¶ 3.11.6. Emergencies: ¶ 3.12.1. Contractors fee increased “accordingly” with increase in cost. ¶ 8.3.1.4. Where cost is in dispute, or where scope of Work is in dispute, Owner must pay 50% of Contractors estimated costs on application. ¶¶ 8.2.2, 8.3.3. Changes in unit prices: ¶ 8.3.2.</p>	<p>against NOAA’s ten year average. ¶ 9.4.3. <b>Price Adjustments:</b> Time only for causes beyond control of Owner and Contractor. ¶ 9.4.4. Costs plus fee (¶ 9.3.1.3) with allowable costs strictly defined (¶¶ 9.3.2-9.3.3.5) and fee set at percentage of costs (¶¶ 9.3.4 – 9.3.4.2.5). Change in price due to change in quantity exceeding 25% of estimated quantity estimated in Contract, see ¶ 9.3.6.2.</p>	<p>perform ... but for such delay.” ¶ 17.4. Contractor not entitled to extension for labor disputes ¶ 17.5.2, also see ¶¶ 4.1.2, 4.3. Contractor must “take all corrective actions reasonably necessary” to meet schedule. ¶ 16.2. Change order required to change schedule. ¶¶ 16.3, 16.5. For excusable delays, see ¶ 17.4. Owner-ordered “cease and desist” causing delay is Contractor’s fault and not excusable. ¶ 23.1.1. <b>Price Adjustments:</b> For changes, as agreed or “on a time and material basis” at Owner’s election. ¶ 9.4.1. No extra compensation for home office overhead or tools. ¶ 9.4.2.</p>
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						“Actual and direct costs” only for compensable delays caused by Owner, design changes, or “any other cause....” ¶ 17.3.
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**ASA Model General Conditions Best Practices for CLAIMS:** Deadlines for claims should be based on actual knowledge of facts giving rise to a claim (rather than constructive knowledge) and should permit a reasonable time for claims; time extensions should be required for all causes reasonably beyond the contractor’s control; price adjustments should include the entire cost of delays not caused by contractor (including overhead) and should include a reasonable amount of overhead and profit for extra work. A contractor should have the right to payment for any extra work that is performed at the owner’s direction, provided that the contractor confirms verbal instructions in writing before starting work.

**CONSEQUENTIAL AND DELAY DAMAGES** (¶ 25 of the ASA Addendum to Subcontract (2004))

<p>EJCDC 1910-8 (1990) No-damage-for-delays, if cause is beyond the control of both Owner and Contractor, or is caused by Owner’s other contractors; time extension is contractor’s exclusive remedy. ¶ 12.4. Contractor waives lost profits for delays caused by differing site conditions. ¶ 4.2.6. Owner waives consequential damages for losses caused by "fire or other peril, whether</p>	<p>AIA A201-1997 Mutual waiver: owner may still claim “liquidated direct damages” when applicable; contractor preserves productivity, site office. ¶¶ 4.3.10, 8.3.3. Time is of the essence. ¶ 8.2.1.</p>	<p>DBIA 535 (1998) Mutual waiver for all consequential damages, subject to exception for liquidated damages to Owner. ¶¶ 10.5, 1.2.1. Arguably conflicts with ¶ 8.2.2., which provides that DBer can have no delay damages for changes “that are beyond the control of both Design-Builder and Owner...” (implying delays otherwise</p>	<p>AOD 2002GC Menu allows choice to limit or bar delay damages, even if Owner caused. ¶ 8.4.3. Yet another “no damage for delay” menu at ¶ 8.6.1. Menu for owner to chose between consequential damages or liquidated damages. ¶ 8.4.5. Time is of the essence. ¶ 4.1.1, 4.5.1. Contractor responsible for delays caused by Owner failure to procure insurance or to record a mortgage. ¶¶ 4.3.1-4.3.3. Owner may require Contractor to increase forces, hours, no adjustment for non-excused delays. ¶¶ 4.4.14, 8.2.6. Costs to stop and re-start work on account of Owner-directed suspension: ¶ 8.4.4. Owner may</p>	<p>AGC 200 (2000) Mutual waiver of consequential damages. ¶ 10.2. “best efforts” to perform “in an expeditious manner.” ¶¶ 2.1.1, 3.5. Time is of the essence. ¶ 6.1.3.</p>	<p>CMAA A-3 (2002) Time is of the essence. ¶ 8.2.1. Detailed scheduling requirements (¶¶ 8.2.3 – 8.2.7, 8.3.2) must reflect “actual intent and reasonable expectations” (¶8.2.9.2). CM may order Contractor to increase forces, hours. ¶ 8.3.2. No damage for delays unless caused by “Owner’s breach of a fundamental obligation” or “uncontemplated delays.” ¶¶ 9.4.4,</p>	<p>COAA B-200GC (2000) Contractor waives all claims for lost profits and opportunities, unabsorbed overhead, and indirect consequential damages. ¶ 26.6. Contractor not entitled to “home office or other non-job site or indirect overhead expenses” caused by changes. ¶9.4.2. Owner-caused delays not impacting scheduled completion do not benefit contractor. ¶ 16.4. Liquidated damages to Owner specified for</p>
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or not insured by Owner." ¶ 5.11.2.1. Time is of the essence. ¶ 12.2.		recoverable). No "time is of the essence" clause – see ¶ 8.1.1.	order acceleration of the work, but claims are limited to "direct incremental cost to comply...." ¶ 8.5.3.		9.4.5.	"inexcusable" delay. ¶ 17.2. Time is of the essence. ¶ 17.1.
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**ASA Model General Conditions Best Practices for CONSEQUENTIAL AND DELAY DAMAGES:** One-sided terms that deny a contractor any right to collect damages for delay, often called "no-damage-for-delay" clauses, are unacceptable. Mutual waivers of consequential damages, such as the contractor's extended home office overhead and the owner's loss of use or added financing expenses, are beneficial and encouraged. A contractor may reserve the right to assess a subcontractor for a share of liquidated damages actually paid to the owner, but only to the extent such share is proportionate to the fault of the subcontractor in causing a delay.

**CONTRACT DOCUMENTS (EXCLUSION OF SUBMITTALS)** (cf. ¶ 2 of the ASA Addendum to Subcontract (2004) (flow-down))

EJCDC 1910-8 (1990) Engineer must approve submittals. ¶¶ 3.6.2, 6.26, but approval does not benefit Contractor. ¶¶ 1.10, 6.27, 6.30.2.6. Contractor entitled to copies at the cost of reproduction. ¶ 2.2.	AIA A201-1997 Submittals must be approved by Architect, but approval does not benefit Contractor. ¶¶ 3.12.4, 3.12.7, 3.12.10, 4.2.7. Owner has duty of "reasonable promptness" ¶ 2.2.4, see also ¶ 3.4.1.	DBIA 535 (1998) DBers submission of interim design submissions does not transfer any design liability to Owner. ¶ 2.4.2. Owner has duty of "timely reviews and approvals." ¶ 3.1.2.	AOD 2002GC Owner must review submittals in "reasonable time," but Contractor must give notice if review required in less than 30 days. ¶ 2.5.6. Review does not benefit contractor. ¶ 2.5.9. Owner's irrevocable license to use submittals for any purpose in relation to the site: ¶ 2.3.6.	AGC 200 (2000) Owner is "responsible for review and approval of submittals" and has duty of "reasonable promptness." ¶ 3.14.2. Approval does not benefit Contractor. ¶¶ 3.14.1., 3.14.3, 3.14.5.	CMAA A-3 (2002) CM must "endeavor" to have approvals within 21 days. ¶ 4.9.6. "Designer shall promptly review" submittals, but approval does not benefit Contractor. ¶¶ 3.1.1, 3.1.3, 4.3.5, 4.9.5, 4.9.9, 11.12.1.	COAA B-200GC (2000) Submittals must be approved by Professional, but approval does not benefit Contractor. ¶¶ 1.8, 7.2.1, 7.2.2. Professional has 14 days to act, ¶ 11.6, but Contractor can't enforce the deadline. ¶ 11.10. Contractor must prepare a schedule for all anticipated submittals. ¶ 7.2. Owner must act in "timely manner." ¶ 14.3.
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**ASA Model General Conditions Best Practices for CONTRACT DOCUMENTS (EXCLUSION OF SUBMITTALS):** Approved submittals should bind the owner in the same manner as the specifications which are "contract documents."

**DELAY DAMAGES: see CONSEQUENTIAL AND DELAY DAMAGES**

**DESIGN DELEGATION** (¶ 6 of the ASA Addendum to Subcontract (2004)) **also see SCOPE OF WORK, SITE INSPECTION and WARRANTY**

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<p>EJCDC 1910-8 (1990) Contractor liable for design errors, compliance of design with codes, of which Contractor "knew or reasonably should have known." ¶¶ 3.3.2, 6.14.2, 8.9. Contractor disclaims liability for negligent design of others. ¶ 6.1.</p>	<p>AIA A201-1997 Contractor disclaims duty to discover design defects, ¶¶ 3.2.1, 3.2.2, 3.2.3, 3.7.3, 3.12.10, but contractor must report known defects, ¶ 3.2.3, 3.7.4. Design services must be specifically delegated unless needed "to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures." ¶ 3.12.10. Codes not warranted. ¶ 3.2.2. Submittals have been checked against the Contract Documents ¶ 3.12.6</p>	<p>DBIA 535 (1998) Design-build: Dber must provide licensed design services. ¶ 2.2.1. Design of "care and skill ordinarily used..." ¶ 2.3.1. Code changes: ¶ 2.5.2.</p>	<p>AOD 2002GC Defects discovered or that Contractor "should have recognized" must be reported, and Contractor may be liable for failure to report items it recognized or "should have recognized." ¶¶ 5.3.2, 5.3.3, 5.3.4, 5.3.8.</p>	<p>AGC 200 (2000) Defects discovered must be reported, but contractor disclaims duty to discover defects. ¶¶ 3.3.2, 3.3.3, 3.3.4. Design services must be specifically delegated to be required. ¶ 3.15. Code changes: ¶ 3.17.3. Submittals have been checked against the Contract Documents. ¶ 3.14.1.</p>	<p>CMAA A-3 (2002) Contractor must report known defects. ¶ 1.1.18, 4.2.1. Contractor warrants design "appear[s] accurate, consistent and complete insofar as can reasonably be determined." ¶¶ 4.2.1, 1.1.14.</p>	<p>COAA B-200GC (2000) Expressly disclaims <i>Spearin</i> owner-warranty of design. ¶ 1.5. Contractor liable for defects of which it "knows or should have known." ¶¶ 2.1.2, 5.3. Contractor warrants compliance with codes, ADA, etc. ¶¶ 8.1.1. 13.2.</p>
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**ASA Model General Conditions Best Practices for DESIGN DELEGATION:** Contractors should not ordinarily accept responsibility for design. When design services are requested, the delegation must be specific and must include all design and performance criteria. Contractors should be responsible for promptly reporting defects they actually discover, but cannot be responsible for other design defects that it is claimed they "should have" recognized, or for design requirements that violate code standards. *See also* SCOPE OF WORK, SITE INSPECTION and WARRANTY.

**DISPUTE RESOLUTION** (¶ 22 of the ASA Addendum to Subcontract (2004))

<p>EJCDC 1910-8 (1990) Engineer must initially decide disputes. ¶¶ 9.11, 9.12 ("condition precedent"), 11.2, 12.1. Unless a separate "Dispute Resolution Agreement" is attached as an exhibit, litigation is required. Article 16.</p>	<p>AIA A201-1997 Architect must initially decide disputes. ¶¶ 4.2.11, 4.2.12, 4.4.1, 4.4.5; partial occupancy disputes ¶ 9.9.1. Mediation "where the Project is located"</p>	<p>DBIA 535 (1998) Discussion, followed by "meeting between the Senior Representatives," followed by mediation, followed by arbitration. ¶¶ 10.2.2, 10.2.3, 10.2.4, 10.3.1. Fees and expenses for "prevailing party." ¶ 10.3.4. Governing law where</p>	<p>AOD 2002GC Menu includes Dispute Review Board, Project Neutral, mediation, arbitration, litigation, jury waiver or "None of the above" ¶¶ 8.7.3, 8.8.1. Venue selection: ¶ 8.8.2. Owner can sue subs directly as third-party beneficiary. ¶ 1.1.6.</p>	<p>AGC 200 (2000) "Senior executives of the parties" must meet, then mediation. ¶¶ 12.2-12.3. Dispute resolution menu permits Dispute Review Board,</p>	<p>CMAA A-3 (2002) Disputes initially submitted to CM. ¶¶ 14.1.3, 15.4.1. Mediation followed by arbitration.</p>	<p>COAA B-200GC (2000) Discussion followed by mediation required. ¶¶ 25.3, 25.4. Governing law where project is located. ¶ 25.1.</p>
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	required prior to arbitration. ¶ 4.5.1. Governing law where Project located. ¶ 13.1.	Project located. ¶ 12.3.1.	Owner may require Subs to submit to arbitration joinder. ¶ 8.8.5.	Advisory or Binding Arbitration, Non-binding mini trial, litigation.	¶¶ 14.1.1, 14.1.2.	Venue where project is located. ¶ 25.2. Jury waiver. ¶ 25.2(iv). Arbitration specifically ruled out. ¶ 25.6.
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**ASA Model General Conditions Best Practices for DISPUTE RESOLUTION:** Early mediation of disputes is beneficial and must be a condition precedent to the use of any other dispute resolution procedure. Should mediation not resolve a dispute, arbitration by an industry professional such as an architect, engineer, contractor or subcontractor is always preferable to litigation before a judge or jury. Arbitration must always be conducted subject to the terms of the written subcontract, so specific contract terms can assist contractors to ensure that arbitration will provide a quick and efficient mechanism for resolving disputes. For example, contract terms can expressly provide that “The award shall be made within nine months of the filing of the notice of intention to arbitrate (demand), and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.” Drafting Dispute Resolution Clauses - A Practical Guide, AAA 12/7/2000.

Or, contract terms may require direct participation by the parties (not merely through their representatives) for

- selection of the arbitrator (to ensure and industry professional is selected),
- any agreement or ruling to permit a continuance, and
- any agreement or ruling to permit any discovery (particularly depositions, which add considerable time and expense) beyond the discovery of information contemplated by RULE F-7 of the AAA’s CONSTRUCTION INDUSTRY ARBITRATION RULES, FAST TRACK PROCEDURES in fast track cases (no claim or counterclaim exceeds \$75,000), or RULE R-22 of the AAA’s CONSTRUCTION INDUSTRY ARBITRATION RULES, REGULAR TRACK PROCEDURES in regular track cases (\$75,001-\$500,000), or RULE L-4 of the AAA’s CONSTRUCTION INDUSTRY ARBITRATION RULES, PROCEDURES FOR LARGE, COMPLEX CONSTRUCTION DISPUTES.

For best practices on recovery of attorneys fees and costs of dispute resolution, *see* ATTORNEYS’ FEES AND COSTS.

**FINAL PAYMENT: *see* RETAINAGE, COMPLETION AND FINAL PAYMENT**

**FINANCING DISCLOSURES** (¶ 3 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990)	AIA A201-1997	DBIA 535 (1998)	AOD 2002GC	AGC 200 (2000)	CMAA A-3 (2002)	COAA B-200GC (2000)
Must be required by supplemental conditions. ¶ 8.11.	Owner financing information available on written request; condition precedent to	Owner financing information available on request; DBer may stop work for failure to provide.	No provision.	Owner financing information available on written request; condition precedent to “commencement	None.	None, however, where contractor has “reasonable grounds for insecurity as to

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	<p>“commencement or continuation” ¶2.2.1. Contractor may terminate for failure to furnish reasonable evidence of sufficient funds. ¶ 14.1.1.4.</p>	<p>¶¶ 3.3.1, 11.3.1.1.</p>		<p>or continuation” ¶ 4.2. Contractor may also terminate contract for failure to furnish reasonable evidence of sufficient funds. ¶ 11.5.2.1.</p>		<p>Owner’s ability, willingness or resources to perform,” Contractor may demand written assurances and stop work after 7 days. ¶¶ 5.7.5-5.7.7.</p>
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**ASA Model General Conditions Best Practices for FINANCING DISCLOSURES:** A contractor must have access to complete project financing information, including change orders, in order to evaluate its risk of nonpayment. Disclosures that demonstrate adequate project financing are a necessary condition to a commencement or continuation of a contractor’s performance.

**HOLD HARMLESS** (¶ 15 of the ASA Addendum to Subcontract (2004)) *also see* **INSURANCE (Liability Insurance)**

<p>EJCDC 1910-8 (1990) (a) limited to bodily injury and property damage, (b) no express duty to defend; (c) includes all losses caused “in whole or in part” by Contractor (intermediate form). ¶¶ 6.31, 6.20, 17.5. Must indemnify against claims by owner or occupant of lands or adjacent lands that arise out of the Work (broad form). ¶¶ 6.16, 17.5. Contractor indemnifies against intellectual property infringement it causes: ¶¶ 6.12, 17.5.</p>	<p>AIA A201-1997  (a) limited to bodily injury and property damage; (b) no express duty to defend; (c) limited to extent of Contractor’s negligence. ¶3.18.1.</p>	<p>DBIA 535 (1998)  (a) limited to bodily injury and property damage; (b) must “defend”; (c) limited to extent of Contractor’s negligence. <b>Mutual</b> – owner agrees to indemnify contractor. ¶¶ 7.4.1, 7.5.1.</p>	<p>AOD 2002GC  (a) “any and all claims”; (b) must “defend”; (c) menu choice between broad form and exclusion of indemnitee’s sole negligence.</p>	<p>AGC 200 (2000)  (a) bodily injury and property damage; (b) must “defend”; (c) limited to extent of Contractor’s negligence (broad form for “Owner’s existing adjacent property...” to limit of CGL (¶ 10.4.4)). <b>Mutual</b> – owner agrees to indemnify contractor. ¶¶ 10.1.1-10.1.2.</p>	<p>CMAA A-3 (2002)  (a) “all claims” (b) no express duty to defend, (c) all losses “caused in whole or part by Contractor” ¶ 4.15.1, 4.15.3. Contractor indemnifies for damage to adjacent property, utilities. ¶ 5.3.1. Contractor responsible for subs ¶ 6.1.3.</p>	<p>COAA B-200GC (2000)  (a) “all losses” (b) must “defend” (c) broad form. ¶ 26.3.</p>
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**ASA Model General Conditions Best Practices for HOLD HARMLESS:** Hold harmless terms must be limited to bodily injury and property damage (other than the Work itself). Such terms must also be limited to provide indemnity only to the extent of the contractor’s negligence, and must provide for payment attorney’s fees rather than including a duty to “defend.” Ideally, hold harmless terms flow in both directions and provide mutual obligations to indemnify the other party to the subcontract against the consequences of the indemnitor’s own negligence.

**INSURANCE**

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- **LIABILITY INSURANCE** (¶ 16-17 of the ASA Addendum to Subcontract (2004))  
 - **“ALL-RISK” PROPERTY INSURANCE** (¶ 18 of the ASA Addendum to Subcontract (2004))

<p>EJCDC 1910-8 (1990)  <b>Liability:</b>          Certificates "and other evidence" reasonably requested, must be delivered prior to work. ¶¶ 2.7, 5.3.2. Objections required within 10 days. ¶ 5.14. Must cover completed operations, ¶ 5.4.9, indemnity obligations, ¶ 5.4.10, and name Owner and Engineer as additional insureds. ¶ 5.4.7. Claims-based coverage must continue 2 years. ¶ 5.4.13. <b>All-Risk:</b> Owner must purchase property insurance which may be named perils instead of all-risk. ¶ 5.6.2. Must cover Contractor's interest, work stored or in transit. ¶¶ 5.6.2, 5.6.4. Mutual waivers of subrogation. ¶¶ 5.11, 6.11.</p>	<p>AIA A201-1997  <b>Liability:</b>          Additional insured barred. ¶ 11.3.3. OCP-type general supervision insurance endorsed. ¶ 11.3.1.  <b>All-Risk:</b>          Owner is required to purchase, ¶ 11.4.1, and must pay deductibles, ¶ 11.4.1.3. Mutual waiver of subrogation applies. ¶ 11.4.7. Policy must cover materials stored off site or in transit. ¶ 11.4.1.4.</p>	<p>DBIA 535 (1998)  <b>Liability:</b>          Additional insured, OCP, not mentioned. See ¶¶ 5.1.1 <i>et seq.</i>  <b>All-Risk:</b>          Owner must purchase property insurance covering interests of contractor, subs and sub-subs, and covering materials stored off site or in transit. ¶ 5.3.1. Mutual waiver of subrogation. ¶ 5.3.5.</p>	<p>AOD 2002GC  <b>Liability:</b>          Additional Insured - Contractor and Sub policies must name Owner as AI using 20 10 11 85 form. ¶¶ 3.3.1, 3.3.2, 3.6.1(x), 3.7.1(i), 3.9.1(i). Duration of coverage for completed ops 3 years. ¶ 3.4.1. Contractor and all Subs must waive subrogation claims. ¶ 3.1.7, 3.6.1(ix), 3.7.1(ii).  <b>All-Risk:</b> Menu choice may require either owner or contractor to purchase. Must include coverage for materials stored off site or in transit. ¶ 3.10.1. Subrogation waiver only applies to contractor-purchased policy and is not mutual. ¶ 3.1.7.</p>	<p>AGC 200 (2000)  <b>Liability:</b>          Additional insured – must name Owner as AI. ¶ 10.3.1. Duration of coverage for completed ops 1 year. ¶ 10.3.3.  <b>All-Risk:</b>          Owner is required to purchase coverage protecting interest of contractor, subs and sub-subs. ¶ 10.4.1. Mutual waiver of subrogation. ¶ 10.4.3.</p>	<p>CMAA A-3 (2002)  <b>Liability:</b>          Additional insured – not mentioned, but CGL must cover contractual liabilities (¶ 12.2.1) and Contractor waives subrogation (¶ 12.6.1). Owner must maintain its own CGL policy. ¶ 12.5.1.  <b>All-Risk:</b> Contractor is required to purchase coverage to protect interests of owner and subcontractors. May be named perils instead of all-risk. Must cover materials stored off site or in transit. ¶ 12.3.1. Mutual waiver of subrogation. ¶ 12.3.2.</p>	<p>COAA B-200GC (2000)  <b>Liability:</b>          Additional insured – not mentioned (see ¶¶ 21.1 <i>et seq.</i>), however, separate “agreement” document (B100-GC (2000)) requires contractor to name Owner as additional insured.  <b>All-Risk:</b> Not mentioned, however, separate “agreement” document (B100-GC (2000)) requires contractor to purchase and cover interest of owner. One-way waiver of subrogation in favor of owner. ¶ 21.4.</p>
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**ASA Model General Conditions Best Practices for INSURANCE:** Any requirements to name additional insureds on any of the contractor’s liability insurance policies, and any waivers of subrogation for claims covered by the contractor’s liability insurance policies (particularly workers compensation), are unacceptable. Requirements to provide special notices of policy cancellation or policy non-renewal often cause great difficulties and friction although they have never been shown to provide any benefits to anyone, and are also unacceptable. Requirements for continuation of coverage beyond the policy period, in the absence of a binding commitment from an insurer to provide that coverage, are also unacceptable. Separate liability insurance to cover the owner and the contractor for liability arising from “general supervision” of the project, such as Owners and Contractors Protective Liability Insurance

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("OCP" - CG 00 09) or Project Management Protective Liability Insurance ("PMPL" – CG 31 15), may be required in lieu of any requirements to name additional insureds or to waive subrogation on the contractor’s liability insurance policies. The owner or contractor should be responsible to purchase all-risk property insurance including coverage for the interests of subcontractors in installed work and in materials delivered, suitably stored or in transit.

**LAW and VENUE** (¶ 23 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990)  No venue provision; Law of place of project governs. ¶ 3.1.	AIA A201-1997  No venue provision; Law of place of project governs. ¶ 13.1.1.	DBIA 535 (1998)  No venue provision; Law of place of project governs. ¶ 12.3.1	AOD 2002GC  No venue provision; Law of place of project governs. ¶ 12.2.	AGC 200 (2000)  No venue provision; Law of place of project governs. ¶ 13.2.	CMAA A-3 (2002)  No venue provision; Law of place of project governs. ¶ 15.1.1.	COAA B-200GC (2000)  Place of project is the required venue, ¶ 25.2, and the law of place of project governs, ¶ 25.1.
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**ASA Model General Conditions Best Practices for LAW and VENUE:** Contracts should provide that the appropriate venue for dispute resolution procedures such as litigation or arbitration is the place where the project is located, and also that the law of the place where the project is located shall govern.

**LIEN RIGHTS** (¶ 21 of the ASA Addendum to Subcontract (2004)) *also see* **WAIVERS**

EJCDC 1910-8 (1990)  Not mentioned.	AIA A201-1997  Subs have right to see payment bonds. ¶ 11.5.2. Right to file liens preserved. ¶ 4.4.8.	DBIA 535 (1998)  DBer must take action to discharge liens within 3 days of notice, including lien bond if necessary. ¶ 7.3.1.	AOD 2002GC  Subs entitled to copy of payment bonds on request. ¶ 3.11.7. Unconditional lien waivers may be required for payment received, but must be conditional for payments not yet received. ¶ 6.4.5. Contractor must “bond-off” all liens within 5 days of Owner’s demand. ¶ 6.8.2. Owner must reimburse bond costs where Owner failed to pay sums owed. ¶ 6.8.3. Time limits expressly not limited by time limits on claims. ¶ 8.2.9.	AGC 200 (2000)  Contractor has 30 days after filing of a lien to cause its removal, or Owner can backcharge costs of bond and reasonable attorneys fees. ¶ 9.2.3.2. Time limits expressly not limited by dispute resolution requirements. ¶ 12.7.	CMAA A-3 (2002)  Contractor must release all liens or owner may pay and deduct payment plus costs and fees. ¶ 11.5.1. Final payment may be withheld while rights to liens exist. ¶ 11.5.2.	COAA B-200GC (2000)  Contractor must bond-off all filed liens or owner can pay and backcharge. ¶ 10.2.
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**ASA Model General Conditions Best Practices for LIEN RIGHTS:** General conditions should require contractors to provide copies of any payment bond to subcontractors on request, and should expressly exempt steps to preserve lien rights from any dispute resolution requirements.

**PAYMENT OF CONTRACTOR** (¶ 10 of the ASA Addendum to Subcontract (2004))

- STORED MATERIALS

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**- RIGHT TO SUSPEND WORK**

**- INTEREST**

<p>EJCDC 1910-8 (1990)  <b>Stored Materials:</b>          Yes, payment for materials “delivered and suitably stored” on or off site. ¶ 14.2.  <b>Right to Suspend:</b>          Yes – 30 days late plus 7 days notice.          Contractor may claim adjustment for “expenses or damage directly attributable” to work suspension. ¶ 15.5  <b>Interest:</b>          Yes. ¶ 15.5.</p>	<p>AIA A201-1997  <b>Stored Materials:</b>          Yes, payment for “materials and equipment suitably stored.” ¶ 9.3.2.  <b>Right to Suspend:</b>          Yes – 7 days late plus 7 days notice. Contractor entitled to “reasonable costs of shut-down, delay and start-up, plus interest.” ¶9.7.1.  <b>Interest:</b>          Yes. ¶ 13.6.1.</p>	<p>DBIA 535 (1998)  <b>Stored Materials:</b>          Yes, payment for “suitably stored” materials. ¶ 6.2.2.  <b>Right to Suspend:</b>          Yes, with 7 days notice. ¶¶ 6.4.1, 11.3.1.2.          Contractor entitled to adjustment “to the extent it has been adversely impacted...” ¶¶ 11.3.2, 8.2.2.  <b>Interest:</b>          Yes. ¶ 6.4.1.</p>	<p>AOD 2002GC  <b>Stored Materials:</b>          Yes, subject to condition that manufacturer’s warranties are “toll[ed].” ¶ 6.7.3.  <b>Right to Suspend:</b>          No, but a right to terminate the contract if the owner fails to pay for 30 days plus 15 days notice of default. ¶ 9.1.2.          Costs of termination. ¶ 9.1.3.  <b>Interest:</b>          Yes, starting 30 days after payment is overdue. ¶ 6.5.6.</p>	<p>AGC 200 (2000)  <b>Stored Materials:</b>          Yes, payment for materials “suitably stored” ¶ 9.2.2.  <b>Right to Suspend:</b>          Yes – 7 days late plus 7 days notice.          Contractor entitled to “reasonable cost and delay resulting from shutdown, delay and start-up.” ¶ 9.5.  <b>Interest:</b>          Yes, starting 30 days after payment is overdue. ¶ 6.5.6.</p>	<p>CMAA A-3 (2002)  <b>Stored Materials:</b>          Yes, payment for materials “stored off site” if properly documented. ¶ 11.2.2.  <b>Right to Suspend:</b>          No, but a right to terminate the contract if the owner fails to pay for 60 days, upon 7 days notice. ¶ 13.1.1.  <b>Interest:</b>          Yes, starting 30 days after payment is overdue. ¶ 6.5.6.</p>	<p>COAA B-200GC (2000)  <b>Stored Materials:</b>          Yes, payment for materials or equipment “properly stored.” ¶ 15.3.1.  <b>Right to Suspend:</b>          Yes, 30 days late plus 14 days notice. No mention of suspension-related costs, but interest accrues.  <b>Interest:</b>          Yes, starting 30 days after payment is overdue. ¶ 6.5.6.</p>
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**ASA Model General Conditions Best Practices for PAYMENT OF CONTRACTOR:** Past due payments should bear interest at a reasonable rate, so long as payment delay is not the fault of the contractor. A contractor should reserve an express right to stop work for non-payment whenever non-payment is not the contractor’s fault, upon reasonable notice and opportunity to cure, including costs of shut-down, delay and start-up. A contractor should be entitled to payment for suitably stored materials.

**PAYMENT OF SUBCONTRACTORS** (¶ 11 of the ASA Addendum to Subcontract (2004))

**- TRUST**

**- DEADLINE**

**- DIRECT PAYMENT / JOINT CHECKS**

<p>EJCDC 1910-8 (1990)  <b>Trust:</b> No provision.  <b>Deadline:</b> None</p>	<p>AIA A201-1997  <b>Trust:</b>          No trust, fiduciary</p>	<p>DBIA 535 (1998)  <b>Trust:</b>          No trust. See ¶</p>	<p>AOD 2002GC  <b>Trust:</b>          YES, all payments for</p>	<p>AGC 200 (2000)  <b>Trust:</b>          No provision.</p>	<p>CMAA A-3 (2002)  <b>Trust:</b>          No provision.</p>	<p>COAA B-200GC (2000)</p>
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provided. <b>Direct Payment / Joint Checks:</b> None provided.	liability expressly disclaimed. ¶ 9.6.7. <b>Deadline:</b> No deadline; contractor must “promptly pay” subs. ¶ 9.6.2. Architect may reply to sub inquiries about payment applications. ¶ 9.6.3 <b>Direct Payment / Joint Checks:</b> No provision.	6.5.1. <b>Deadline:</b> No deadline; contractor “will pay” subs “in accordance with its contractual obligations to such parties” ¶ 6.5.1. <b>Direct Payment / Joint Checks:</b> No provision.	work performed by subs “shall be held in trust by Contractor for such Subcontractors.” ¶ 6.9.2. <b>Deadline:</b> No, but Owner may follow-up and demand payment of a sub within 7 days of notice. ¶ 6.9.4. <b>Direct Payment / Joint Checks:</b> Yes, if Contractor fails to pay after written notice from Owner. ¶ 6.9.4.	<b>Deadline:</b> No provision. <b>Direct Payment / Joint Checks:</b> No provision.	<b>Deadline:</b> No deadline; contractor must “promptly pay” subcontractors. ¶ 6.2.1. Owner “may” tell subs about applications for payment and payments. ¶ 6.2.2. <b>Direct Payment / Joint Checks:</b> No provision.	<b>Trust:</b> No trust. See ¶ 15.12. <b>Deadline:</b> No deadline; contractor “shall pay” subs. ¶ 15.12. <b>Direct Payment / Joint Checks:</b> Owner can issue joint checks if Contractor fails to pay. ¶ 15.12.
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**ASA Model General Conditions Best Practices for PAYMENT OF SUBCONTRACTORS:** Owner payments to the contractor must be held in trust for the contractor’s subcontractors and suppliers. The contractor must be provided a firm deadline of not more than 7 days by which it must disburse funds it receives from the owner for payment of contractor’s subcontractor’s and suppliers. The owner should expressly preserve its authority to pay a subcontractor directly who is not paid by the contractor.

**PUNCHLIST: see RETAINAGE, COMPLETION AND FINAL PAYMENT**

**RETAINAGE, COMPLETION AND FINAL PAYMENT** (¶ 9 of the ASA Addendum to Subcontract (2004))

- RETAINAGE
- SUBSTANTIAL COMPLETION
- PUNCHLIST
- FINAL PAYMENT

EJCDC 1910-8 (1990) <b>Retainage:</b> Held until final payment, see ¶ 14.14. <b>Substantial Completion:</b> Subjectively defined: “in the opinion of	AIA A201-1997 <b>Retainage:</b> Paid at substantial completion, less punchlist amounts. ¶ 9.8.5. <b>Substantial</b>	DBIA 535 (1998) <b>Retainage:</b> Paid at substantial completion, less punchlist amounts. ¶	AOD 2002GC <b>Retainage:</b> Menu ¶ 6.6.4 No retainage, or reduced retainage, after 50% completion 6.6.2 Line item 6.6.3. <b>Substantial</b>	AGC 200 (2000) <b>Retainage:</b> Paid at substantial completion less 200% estimated cost of punchlist items. ¶ 9.6.4. No retainage after 50% completion; Contractor	CMAA A-3 (2002) <b>Retainage:</b> No provision in general conditions; separate CMAA contract documents includes a blank	COAA B-200GC (2000) <b>Retainage:</b> Not addressed. <b>Substantial Completion:</b> Objectively defined: “when the
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<p>Engineer ... [the Work] is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. ¶ 1.38.  <b>Punchlist:</b> Contractor prepares with request for certificate of substantial completion. Engineer and Owner must review and attach to certificate. ¶ 14.8.  <b>Final Payment:</b> Work must be “completed” and Contractor’s “other obligations under the Contract Documents” must be fulfilled. ¶ 14.13. Final payment is a waiver of all claims unless previously made in writing and still unsettled. ¶ 14.15.2.</p>	<p><b>Completion:</b> Objectively defined: “sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.” ¶ 9.8.1. Certified by architect. ¶ 8.1.3, 9.8.3.  <b>Punchlist:</b> Contractor submits first draft. ¶ 9.8.2. Final punchlist is attached to the certificate of substantial completion prepared by Architect. ¶ 9.8.4.  <b>Final Payment:</b> Work must be “acceptable under the Contract Documents.” ¶ 9.10.1, 12.2.1.1. Final payment is</p>	<p>6.6.2.  <b>Substantial Completion:</b> Objectively defined: “sufficiently complete so that Owner can occupy and use the Project ... for its intended purposes.” ¶ 1.2.11.  <b>Punchlist:</b> Owner prepares punchlist after joint inspection with contractor. ¶ 6.6.1.  <b>Final Payment:</b> Work must be “in conformance with the Contract Documents.” ¶ 6.7.1. Dber must waive all claims not previously made and identified as</p>	<p><b>Completion:</b> Objectively defined: “sufficiently complete in accordance with the Contract Documents, so that Owner may access, occupy, use and enjoy the Project ... for its intended purpose” and a Certificate of Occupancy is issued. ¶ 1.4.1 (z).  <b>Punchlist:</b> Contractor prepares first draft and must supplement per Owner’s instructions after inspection. ¶ 5.11.3-5.11.4.  <b>Final Payment:</b> Contractor may apply for payment after Certificate of Final Completion issued. ¶ 5.12.6. Conditioned on receipt of certificates of insurance for coverages to remain in effect after completion (are certificates for future policies available?) ¶¶ 6.10.1(iv), 3.4.1. Contractor’s</p>	<p>may substitute securities; line-item release permitted. ¶ 9.2.4. Owner must pay amounts retained for punchlist items “monthly ... as each item is completed.” ¶ 9.6.4.  <b>Substantial Completion:</b> Objectively defined: “sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project...” ¶ 2.3.17. Issuance of Certificate of Occupancy explicitly not a requirement when “due to factors beyond the Contractor’s control.” ¶ 2.3.17.  <b>Punchlist:</b> Contractor prepares first draft. ¶ 9.6.2. Owner must pay monthly “for unfinished items as each item is completed.” ¶ 9.6.4.  <b>Final Payment:</b> Owner must pay amounts retained for punchlist items “monthly ... as each item is completed.” ¶ 9.6.4. “Final completion”</p>	<p>for retainage terms.  <b>Substantial Completion:</b> Subjective: “date determined by CM ... when the Work ... is sufficiently complete in accordance with the Contract Documents so that the Owner may fully occupy and use the Project ... for the use ... intended...” ¶ 1.1.11, 2.1.13.  <b>Punchlist:</b> CM prepares the list. ¶ 11.7.1.  <b>Final Payment:</b> Owner and CM must be “satisf[ied] that the Work has been completed and the Contractor’s other obligations under the Contract Documents have been fulfilled.” ¶ 11.11.1. Final payment is waiver of claims. ¶¶ 2.2.5, 11.13.1.3. Final</p>	<p>Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.” See Article 28. Determined by the Professional. ¶¶ 12.1, 12.1.4, 12.1.5, 12.1.7. Operation, maintenance manuals and training required 28 days in advance of substantial completion. ¶ 3.13.  <b>Punchlist:</b> Contractor submits first draft. ¶ 12.1.2. Architect supplements during Substantial Completion inspection. ¶ 12.1.4.  <b>Final Payment:</b> Tied to completion of punchlist and determination whether work is “finally complete.” ¶¶ 12.2.3, 12.2.4. No final payment until “satisfactory</p>
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	a waiver of all claims unless previously made and identified as unsettled. ¶ 9.10.5.	unsettled. ¶ 6.7.2.2.	application may identify claims sought to be preserved. ¶ 5.12.1. Claims must be reserved in the Certificate of Final Completion or they are waived. ¶ 5.12.5, 5.12.8.	requires that Work is “acceptable under the Contract Documents.” ¶ 9.8.1. Contractor may preserve claims identified in request for final payment. ¶ 9.8.7.	payment may be withheld while rights to liens exist. ¶ 11.5.2.	final clean-up” and inspection by owner and A/E ¶3.11
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**ASA Model General Conditions Best Practices for RETAINAGE, COMPLETION AND FINAL PAYMENT:** Retainage should be due on substantial completion, less only those amounts sufficient to pay for punch list items. Substantial completion should be objectively defined as the time when the project is sufficiently complete to be occupied or utilized, such as when a certificate of occupancy is issued. Final payment must not constitute a waiver of claims previously asserted in writing and still pending at the time of final payment.

**SCOPE OF WORK** (¶ 1 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990)  Contractor's bid is a “contract documents” if attached, ¶ 1.10, but scope is all work "that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result ... whether or not specifically called for." ¶ 3.2.	AIA A201-1997  All work “reasonably inferable ... to produce the indicated results.” ¶ 1.2.1.	DBIA 535 (1998)  All work “reasonably inferable from the Contract Documents.” ¶ 1.2.12.	AOD 2002GC  Menu permits choice between “results indicated” and “results intended”. ¶ 1.4.1 (aa).	AGC 200 (2000)  All work “reasonably inferable ... to produce the indicated results.” ¶¶ 3.1.1, 14.2.1. Bid incorporated “only to the extent ... consistent with the other Contract Documents.” ¶ 2.1.2.	CMAA A-3 (2002)  All work “reasonably ... inferred ... to produce the intended result ... whether or not specified.” ¶ 1.1.16; see also 1.1.17 (“overall intent”)	COAA B-200GC (2000)  Separate “agreement” document (B100-GC (2000)) requires everything “necessary for proper execution and completion of its scope of the Work” (B100-GC at ¶ 4.1).
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**ASA Model General Conditions Best Practices for SCOPE OF WORK:** The scope of work must be limited to all work actually indicated in the plans and specifications which was the subject of the contractor’s bid.

**SITE INSPECTION, PLAN DEFECTS and HAZARDOUS MATERIALS** (¶ 5 of the ASA Addendum to Subcontract (2004))

**see also DESIGN DELEGATION**

EJCDC 1910-8 (1990) <b>Site Visit:</b> Site visit required to "check and	AIA A201-1997 <b>Site Visit:</b> Site visit and	DBIA 535 (1998) <b>Site Visit:</b> Owner required to	AOD 2002GC <b>Site Visit:</b> Site visit required.	AGC 200 (2000) <b>Site Visit:</b>	CMAA A-3 (2002) <b>Site Visit:</b> Site visit required. ¶	COAA B-200GC (2000)
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<p>verify pertinent figures ... and ... field measurements." Contractor liable for errors discovered and errors Contractor "reasonably should have known thereof," ¶ 2.5, or "could reasonably have been discovered," ¶ 4.2.6.4.2. Contractor may only rely on those portions of owner-furnished reports that are specifically identified as "technical data" in the Supplementary Conditions. ¶ 4.2.2. Contractor must independently verify utilities. ¶¶ 4.3, 6.20.3. <b>Claims:</b> Permitted for material difference in site conditions: ¶¶ 4.3.3, 4.3.4, 4.3.5, 4.3.6.</p> <p><b>Hazardous Materials:</b> Contractor must stop work. ¶ 4.5.2.. Owner must take corrective action and indemnifies Contractor. ¶¶ 4.5.1, 4.5.4. Contractor time and price adjustments, ¶ 4.5.2.</p>	<p>observations required. ¶¶ 1.5.2, 3.2.1. Contractor may rely on owner-furnished survey. ¶ 2.2.3. <b>Claims:</b> Specific claims procedure. ¶ 4.3.4.</p> <p><b>Hazardous Materials:</b> Contractor must stop work where "reasonable precautions will be inadequate." ¶ 10.3.1. Owner must remediate; Contractor time and price adjustments and "reasonable costs of shut-down, delay and start-up" ¶ 10.3.2. Owner indemnifies contractor. ¶ 10.3.3, 10.5.</p>	<p>provide, and DBeR entitled to rely upon, survey and subsurface geotechnical studies. ¶ 3.2.1. <b>Claims:</b> Specific claims procedure. ¶¶ 4.2.1, 4.2.2, see also ¶ 8.2.1.</p> <p><b>Hazardous Materials:</b> Contractor must stop work immediately and notify Owner. ¶ 4.1.1. Owner must remediate; DBeR time and price adjustments "to the extent ... cost and/or time of performance have been adversely impacted." ¶¶ 4.1.4, 8.2.1. Owner indemnifies DBeR. ¶¶ 4.1.5, 4.1.6.</p>	<p>¶¶ 1.5.1(ii), 5.3.1, 1.4(k). Menu choice to hold contractor liable for discrepancies it recognized or "should have recognized." ¶ 5.3.4, cf. ¶ 8.3.4. Contractor may rely on facts in contract documents "only to the extent the information is complete, in final form, and consistent with all other information known or reasonably available." ¶¶ 2.4.2, 8.3.4. Contractor must independently verify utilities. ¶ 2.4.3.</p> <p><b>Hazardous Materials:</b> Contractor must stop all work in affected area and notify owner. ¶ 11.2.2. Owner must pay direct suspension and start-up costs. ¶ 11.2.7. Owner indemnifies</p>	<p>Site visit required. ¶ 3.16.1. Contractor entitled to rely on Owner-furnished information. ¶ 4.3. <b>Claims:</b> Contractor may make a claim for adjustment of time or price. ¶ 3.16.2.</p> <p><b>Hazardous Materials:</b> Contractor may stop work, and must notify owner. ¶¶ 3.13.1, 3.13.2, 3.13.3. Owner must remediate. ¶¶ 3.13.1, 3.13.4. Owner indemnifies contractor. ¶ 3.13.6. Contractor time and price adjustments for "additional costs" or "delay[s]" ¶</p>	<p>1.1.14, 4.17.1. Contractor must "conduct additional investigations as may be necessary," ¶ 4.17.2. <b>Claims:</b> Adjustment only if Contractor "not reasonably ... expected to have been aware" or was "reasonably ... entitled to rely upon" an incorrect representation in the Contract Documents. ¶ 4.17.5; cf. ¶ 4.17.3 (may rely on "factual data ... used by the Designer.")</p> <p><b>Hazardous Materials:</b> Contractor must stop work and notify Owner. ¶ 4.18.2. Owner indemnifies contractor. ¶ 4.18.4. No adjustment unless a portion of the Work is "deleted." ¶ 4.18.3.</p>	<p><b>Site Visit:</b> Site visit required, and contractor must "gather[] all ... information necessary for a full understanding of its scope of the Work."</p> <p>¶ 2.2. <b>Claims:</b> Claims procedure permits "equitable adjustment." ¶ 18.1.</p> <p><b>Hazardous Materials:</b> Contractor must stop work and "immediately notify" owner, verbally and in writing. ¶ 3.9. No express duty of owner to remediate. No Owner indemnification of Contractor. No mention of adjustment.</p>
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			contractor. ¶ 11.3.4.	3.13.5.		
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**ASA Model General Conditions Best Practices for SITE INSPECTION, PLAN DEFECTS AND HAZARDOUS MATERIALS:** A contractor may be required to conduct a site visit, make observations, and report discovered discrepancies, but must not have an affirmative duty to discovery problems in the site conditions or design that a person in the subcontractor’s trade would not ascertain by a reasonable, visual inspection. Contractors must be entitled to rely on the accuracy and completeness of the plans and specifications, and on the accuracy of reports of conditions furnished by the owner. *See also* DESIGN DELEGATION.

**SUBMITTALS: see CONTRACT DOCUMENTS**

**SUBSTANTIAL COMPLETION: see RETAINAGE**

**SUSPENSION OF WORK** (¶ 19 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990)  Owner may suspend work for up to 90 days, Contractor entitled to claim time and price adjustments. ¶ 15.1. Contractor may terminate for longer suspensions. ¶ 15.5.	AIA A201-1997  Owner may suspend and the contractor may claim an adjustment. ¶ 14.3.2.	DBIA 535 (1998)  Owner may suspend for 60 consecutive days, 90 days aggregate, and DBer may claim an adjustment. ¶ 11.1. DBer may terminate for longer suspensions. ¶ 11.4.1.1.	AOD 2002GC  Owner may suspend and the contractor may claim an adjustment. ¶¶ 5.9.1, 5.9.4. Contractor may terminate for suspensions longer than 90 consecutive days. ¶ 9.1.1.	AGC 200 (2000)  Owner may suspend and contractor may claim an adjustment. ¶ 11.1.1. Contractor may terminate for suspensions exceeding 30 days. ¶ 11.5.1.	CMAA A-3 (2002)  Owner may suspend for up to 180 days. The contractor may claim an adjustment. ¶ 2.2. Contractor may terminate for suspensions exceeding 180 days. ¶ 13.1.1.	COAA B-200GC (2000)  Owner may suspend for causes the fault of the contractor until remedied; no adjustment permitted. ¶ 23.1. Contractor has no express right to terminate for long suspensions. See ¶ 24.2.
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**ASA Model General Conditions Best Practices for SUSPENSION OF WORK:** The contractor should be entitled to claim time and price adjustments for any suspension of work which is not the fault of the contractor. The contractor should be able to terminate the contract for unreasonably long suspensions measured in the aggregate, and not by consecutive days. Terms restricting recovery where work “would have been” suspended anyway due to contractor’s fault merely restate common law requirement for causation.

**TERMINATION FOR CONVENIENCE** (¶ 20 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990) Contractor paid for completed work and expenses prior to	AIA A201-1997 Contractor paid for completed work, costs, plus	DBIA 535 (1998) Not handled in general conditions, but referenced	AOD 2002GC Contractor paid for completed work, costs of	AGC 200 (2000) Contractor paid for completed work and costs of termination. ¶	CMAA A-3 (2002) Contractor paid for cost of work	COAA B-200GC (2000) Contractor paid for completed work, costs,
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termination date, claims terminat	“reasonable overhead and profit on the Work not executed.” ¶ 14.4.3.	from other DBIA documents. ¶ 11.2.4, see also ¶ 1.2.1.	termination. ¶ 9.4.3.	11.4.2. Contractor may terminate contract for Owner suspension for convenience and is entitled to equitable adjustment of time and price. ¶¶ 11.1.1, 11.5.1.3.	performed plus reasonable termination expenses. ¶ 13.2.2. Suspend work for up to 6 mos. without reimbursement of costs: 2.2.2	plus “reasonable allowance for overhead on profit” on “the terminated portion” of the work unless Owner can show Contractor would not have made a profit. ¶ 24.4. Payment up to original contract amount only. ¶ 24.6.
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**ASA Model General Conditions Best Practices for TERMINATION FOR CONVENIENCE:** Where termination is not due to the contractor’s default, then the contractor must be entitled to its expectancy contract damages, i.e., profit and overhead on uncompleted work, plus all expenses related to termination (such as termination of subcontracts and attorneys fees), plus payment for work completed and expenses for labor and materials to the date of termination.

**VENUE: see LAW AND VENUE**

**WAIVERS** (¶ 14 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990) Unconditional waivers required for final payment. ¶ 14.12.	AIA A201-1997 “[W]aivers of liens, claims, security interests or encumbrances ... in such form as may be designated by the Owner” required for final payment. ¶ 9.10.2.	DBIA 535 (1998) Affidavit that subcontractors are paid is required, but not lien waivers. ¶¶ 6.2.3, 6.7.2.	AOD 2002GC Unconditional lien waivers through date of prior application for payment may be required, or conditional lien waivers through date of current payment application. ¶ 6.4.5.	AGC 200 (2000) Conditional lien waivers may be required for progress payments. ¶ 9.2.3.1.	CMAA A-3 (2002) “[L]egally effective” lien waivers required before final payment. ¶ 11.10.2.	COAA B-200GC (2000) Lien waivers may be required for progress payments. ¶15.3.1
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**ASA Model General Conditions Best Practices for WAIVERS:** Language requiring one party to sign waivers in whatever form is considered suitable by the other party is generally unacceptable. Any waiver form must be specified before the contract is signed, must be conditional on payment (except for payments already received), must not apply to funds still held as retainage, and must not apply to claims unrelated to the payment security rights of the contractor.

**WARRANTY** (¶ 4 of the ASA Addendum to Subcontract (2004))

EJCDC 1910-8 (1990) (a) Materials "of good quality	AIA A201-1997	DBIA 535 (1998)	AOD 2002GC (a)Materials:	AGC 200 (2000) (a) Materials: “new” ¶	CMAA A-3 (2002) (a) Materials:	COAA B-200GC (2000)
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<p>and new" ¶ 6.5.          (b) Work - Contractor must "supervise, inspect and direct the Work competently and efficiently," ¶¶ 6.1, and must use competent, qualified personnel. ¶ 6.3. All work must not be "defective." ¶¶ 6.30.1, 1.14. Abuse, modification, improper, maintenance or operation excluded. Wear and tear excluded.          (c) One year correction period requires owner to notify contractor before incurring costs. ¶ 13.12.1, 13.14.</p>	<p>(a) Materials - "of good quality and new"          (b) Work – "free from defects not inherent in the quality required or permitted" ¶ 3.5.1.          (c) One-year correction period, mandatory against owner, express waiver by Owner. ¶¶ 12.2.2.1-12.2.5.</p>	<p>(a) Materials "new ... of good quality"          (b) Work – "free of defects in materials and workmanship" ¶ 2.9.1.          (c) One-year correction period, no express waiver by Owner. ¶ 2.10.1.</p>	<p>"above average quality" ¶ 2.2.2. New, unused, "free of defects: ¶ 5.13.1.          (b) Work: "above average quality" ¶ 2.2.2. "free of defects" ¶ 5.13.1.          (c) One year correction period, no express waiver by Owner. ¶¶ 5.14.1, 5.14.2, 5.14.4.</p>	<p>3.5. New, good quality, free of defective workmanship or materials. ¶ 3.8.1. Certain special or extended warranties limited to one year. ¶ 3.8.3.          (b) Work: "workmanlike" ¶ 3.5. Free of defects "not intrinsic in the design or materials required." ¶ 3.8.1.          (c) One year correction period, express waiver by Owner. ¶ 3.9.1. Owner must promptly notify contractor of any defects whenever discovered. ¶ 3.9.4.</p>	<p>"good quality and new"          (b) Work: "skillful and workmanlike manner" ¶ 4.4.2, "not defective" ¶ 4.13.2, "competent and suitably qualified personnel" ¶ 4.4.3; NOTE: "Contractor's responsibility to perform the Work in accordance with the Contract Documents is absolute...." ¶ 4.3.5.          (c) One year correction period, no express waiver by Owner. ¶ 10.3.1.</p>	<p>(a) Materials- new, merchantable, and of specified quality.          (b) Work –installed in "<b>strict compliance</b>" with manufacturer specs. ¶ 5.2. Work in a submittal must "function properly." ¶ 7.2.1. Work performed in "workmanlike manner." ¶ 13.2, cf. ¶ 3.1 ("best skill and attention").          (c) One-year correction period includes a required walk-through at 11 months. ¶ 13.1</p>
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**ASA Model General Conditions Best Practices for WARRANTY:** A contractor's warranty should provide that work is free of defects and performed in workmanlike manner, but must exclude defects inherent in the design or specified materials, ordinary wear and tear, improper maintenance, abuse, modifications, and implied warranties. A contractor's warranty must have a time limit which should run from either substantial completion or issuance of a certificate of occupancy to the owner, whichever is earlier. A contractor's warranty must reserve the right of the contractor to notice and an opportunity to cure any claimed breach of the warranty, by providing for waiver of any warranty claims where the contractor is not provided an opportunity to cure.

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