

 **AIA[®] Document A511[™] – 1999**

Guide for Supplementary Conditions

The following supplements are representative of those that may be required on a typical project, but are not intended to be all-inclusive. Not all of the additions or modifications shown will be necessary for every project.

SUGGESTED INTRODUCTORY PARAGRAPH TO SUPPLEMENTARY CONDITIONS

The following supplements modify the General Conditions of the Contract for Construction, AIA[®] Document A201[™]–1997. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

Where A201[™]CMa–1992 or A275[™]ID–2003 form the General Conditions, the reference above should read as follows:

"General Conditions of the Contract for Construction," AIA[®] Document A201[™]CMa–1992

or

"General Conditions of the Contract for Furniture, Furnishings and Equipment," AIA[®] Document A275[™]ID –2003

Where the General Conditions are those contained in AIA[®] Document A107[™]–1997, the reference here should read as follows:

"Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope," AIA[®] Document A107[™]–1997

Article 1: General Provisions

§ 1.1 Basic Definitions

Certain corporate clients or governmental agencies may require the use of terms such as "Project Manager," "Contracting Officer" or others which may have important and necessary connotations, and these terms should be defined here.

§ 1.1.1 If a client requires that the bidding requirements and other documents be included in the Contract Documents, the specific documents should be enumerated in the Agreement between the Owner and Contractor and added to Section 1.1.1 of the General Conditions as Contract Documents. It may also be advisable to bring this to the attention of Bidders in the Instructions to Bidders.

Problems have been reported relating to the use of electronic versions of the Contract Documents. Incompatibilities among software and hardware can alter documents in ways that are not readily apparent. Use of electronic documents implies a significant increase in the Contractor's responsibility to manage, control and distribute this information. Architects who are required to provide documents in electronic form should consult with an attorney for appropriate indemnification language to be added to the Supplementary Conditions.

Add the following sentence to the end of Section 1.1.1:

The Contract Documents executed in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

§ 1.1.4 The Project

If the Work to be performed by the Contractor does not constitute the total Project, the relationship of the Contractor's Work to that to be performed by other separate contractors or the Owner should be made clear in the Contract Documents. General information concerning the relationship of the Contractor's activities to construction by other separate contractors or the Owner should be specified in the General Requirements (Division 1 of the Specifications).

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 A principle of the AIA General Conditions is not to establish a system of precedence among the Contract Documents, but to provide that all Documents are complementary. In the event of inconsistencies among the Documents, the Architect is to interpret them in accordance with this principle. The Architect's decisions are subject to mediation and arbitration if a decision is disputed. Establishing a fixed order of priority is not recommended, because no one document constitutes the best authority on all issues that may arise. The order shown here is suggested for consistency in the event an Owner insists on establishing a precedence. Note that this modification does not establish a precedence between Drawings and Divisions 2 through 16 of the Specifications, which together describe the Work.

Add Section 1.2.1.1 to Section 1.2.1:

§ 1.2.1.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Agreement.
2. Addenda, with those of later date having precedence over those of earlier date.
3. The Supplementary Conditions.
4. The General Conditions of the Contract for Construction.
5. Division 1 of the Specifications.
6. Drawings and Divisions 2-16 of the Specifications.

In the case of conflicts or discrepancies between Drawings and Divisions 2-16 of the Specifications or within either Document not clarified by Addendum, the Architect will determine which takes precedence in accordance with Section 4.2.11.

§ 1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service

In some instances, the Contractor may request copies of the Drawings in electronic form for use in preparing shop drawings. Use of such electronic documents may save time, but there are hazards involved for the Owner and Architect. It is not practical to suggest model language for all the situations that may arise, but some considerations may be noted.

Because certain information in the electronic documents may no longer conform to the Contract Documents in use on the site in hard copy, it is critical that the Contractor disclose, and the Owner and Architect agree to, the use that the Contractor is to make of the electronic documents or data. The Contractor should also be required to agree not to transfer such documents or data to other formats or to other persons or entities without permission of the Owner and Architect, and to indemnify the Owner and Architect against any adverse consequences of their use. A "test run" involving a detailed sample of the electronic documents or data is also advisable to ensure software compatibility between the Architect's and Contractor's computer systems.

CAUTION: Section 4.2.4 requires that transfer of electronic documents to Subcontractors must be managed by the Contractor.

Add the following Section 1.6.2 to Paragraph 1.6:

§ 1.6.2 Contractor's Use of Instruments of Service in Electronic Form.

§ 1.6.2.1 The Architect may, with the concurrence of the Owner, furnish to the Contractor versions of Instruments of Service in electronic form. The Contract Documents executed or identified in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic means involving computers.

§ 1.6.2.2 The Contractor shall not transfer or reuse Instruments of Service in electronic or machine readable form without the prior written consent of the Architect.

§ 1.7 If a partnering arrangement is anticipated following execution of the Agreement, the following language may be appropriate. Involvement of representatives of the Owner, Contractor and Architect is customary, but selected Subcontractors and design consultants may also be required to participate.

Partnering arrangements should be approached with a measure of caution. The term "partnering" should be avoided because it implies a contractual relationship. The term "partnering" has no defined meaning, and

could not have one without adding to the contractual obligations of the parties. By the language given below, the parties simply agree to meet in furtherance of their common interests. Such meetings may be used to obtain interpretations of the Contract Documents, and to resolve disputes short of mediation or arbitration. It should be recognized, however, that actions taken at such meetings may modify the rights and obligations of the parties under the Contract, even though the agreement to meet does not do so.

If the participants intend to retain the use of a facilitator to further this arrangement, language should be added to address who shall bear the cost of the facilitator.

Add the following Section 1.7 to Article 1:

§ 1.7 Representatives of the Owner, Contractor and Architect shall meet periodically at mutually agreed-upon intervals for the purpose of establishing procedures to facilitate cooperation, communication and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

Article 2: Owner

§ 2.2 Information and Services Required of the Owner

§ 2.2.2 When the Project is subject, after award of the Contract, to a prolonged review or approval process by governmental or other agencies, it is desirable, if possible, to describe this process and to state whether the Contractor is expected to play any role in the process and the effect this process may be expected to have on the commencement of the Work and the progress schedule.

§ 2.2.3 It may be necessary in some instances to describe more fully the surveys which the Owner is furnishing (i.e., metes and bounds only or topographical). This should be done as a supplement to this section.

When the Owner identified in the Agreement between Owner and Contractor is not the owner of record of the Project site or the legal description of the property is not set forth in the Contract Documents, this section should be modified in the Supplementary Conditions to advise the Contractor where the legal description is available.

§ 2.2.5 If the Contractor is to be furnished only a specific number of sets of Drawings and Project Manuals without charge, this should be stated here, with the basis on which the Contractor will be charged for additional sets.

Use of this supplement requires the section in the General Requirements (Division 1 of the Specifications) that contains the list of items to be identified.

Delete Section 2.2.5 and substitute the following:

§ 2.2.5 The Contractor will be furnished, free of charge, _____ copies of Drawings and Project Manuals. Additional sets will be furnished at the cost of reproduction, postage and handling.

§ 2.2.6 In some states, Uniform Building Code language is interpreted to mean that the Contractor may not employ or be responsible for special inspectors.

Add Section 2.2.6 to Section 2.2:

§ 2.2.6 The Owner will procure and bear costs of structural tests and special inspections as required by the applicable building code.

Article 3: Contractor

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

In B141™–1997, Section 2.6.1.5 provides for the Architect's review of the Contractor's requests for information. In addition, Section 2.8.2.2 of B141™–1997 provides for a change in the Architect's services for responses to Contractor's requests for information where such information is already available to the Contractor. The following model language may be used to provide consistency between A201™ and B141™ provisions for the Architect's review of Contractor's requests for information. Note that it may be desirable for the Architect to develop a standard request for information form for the Contractor's use on the Project.

Add the following Section 3.2.4 to Section 3.2:

§ 3.2.4 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.4 Labor and Materials

§ 3.4.2 The following language may be used in situations where it is intended that substitutions should not necessarily require a Change Order. This section establishes the criteria for submission and evaluation of such substitutions. Such language should be included in the General Requirements (Division 1 of the Specifications) as well as the Supplementary Conditions. With regard to Section 3.4.2.3, note that when multiple contracts are employed, substitutions may expose the Owner to claims from other separate contractors.

Delete Section 3.4.2 and substitute the following:

§ 3.4.2 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.4 Substitutions proposed by the Contractor must be evaluated by the Architect and, if accepted, may require revision of the Drawings and Specifications. The resulting demands on the Architect's time and other resources may entitle the Architect to an adjustment in compensation, as is the case under Section 2.8.2.6 of AIA® Document B141™–1997. The following language allows the Owner to pass this expense on to the Contractor. This language should only be used on Projects where the Owner is fully prepared to deal with disputes that may arise from enforcement of this provision—for example, in situations where the Architect evaluates and then rejects the Contractor's proposed substitution. The Owner and Architect should also be prepared to deal with proposed substitutions that benefit the Owner.

Add the following Section 3.4.4 to Section 3.4:

§ 3.4.4 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed substitutions and to make agreed-upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

§ 3.5 Warranty

§ 3.5.1 Note that the terms of the warranty under Section 3.5.1 are separate and distinct from the Contractor's obligation to correct the Work, as required under Section 12.2. Special warranties in the technical sections of the Specifications may also limit or expand obligations under this warranty. It is strongly suggested that Section 3.5.1 only be modified with legal advice.

§ 3.6 Taxes

§ 3.6.1 Certain non-profit organizations may be wholly or partially tax-exempt. Since the degree of tax exemption varies from jurisdiction to jurisdiction, the Owner should provide the exact language for statements concerning tax exemption to be included in the Supplementary Conditions.

§ 3.7 Permits, Fees and Notices

§ 3.7.1 Where separate Contracts are used, list the permits and governmental fees, licenses and inspections each Contractor is required to obtain and pay for to avoid duplication or error.

In certain circumstances the Owner may elect to obtain the building permit, certain permits may not be required or the Owner may elect to pay for other fees, and this section should be appropriately modified. Attention should be given to Section 2.2.2 which relates to this issue. In any case, deviation from the provisions of the General Conditions should be specifically noted. The model language below can be expanded upon by adding other items, such as environmental impact fees.

Add the following two sentences to Section 3.7.1:

The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the site. The Contractor shall secure and arrange for all necessary utility connections.

§ 3.8 Allowances

§ 3.8.1 Allowances should be specified in the General Requirements (Division 1 of the Specifications) with appropriate references in the particular sections of the Specifications. If allowances are to be expended by Subcontractors rather than directly by the Contractor (for example, an allowance for the purchase of special light fixtures), the information in the General Requirements (Division 1 of the Specifications) should clarify that the Subcontractor's overhead, profit, handling and other costs are included in the Contract Sum and that the allowance covers only the net cost to the Subcontractor.

§ 3.8.2.2 If installation costs are to be included in the allowances, they should be excluded from the Contractor's costs under Section 3.8.2.2. Similar exclusions should be used if allowances include costs of testing or inspection. Quantity allowances or contingency allowances require further revision of Section 3.8.2.

§ 3.8.2.2 Delete the semicolon at the end of Section 3.8.2.2 and add the following:

, except that if installation is included as part of an allowance in Divisions 1-16 of the Specifications, the installation and labor cost for greater or lesser quantities of Work shall be determined in accordance with Section 7.3.6;

Renovation projects often require implementation of contractual techniques to manage unknown conditions. Quantity allowances may be established for such conditions and coupled with unit pricing mechanisms that will be triggered in the event that greater or lesser quantities of Work than those anticipated by the quantity allowance become necessary. If the potential range of variation is large, the Owner may wish to include overhead and profit in the quantity allowance, but not in the unit price. Since the quantity allowance is an assumed amount of Work in the Contract Sum and the unit price is the amount proposed by the Contractor to perform a greater or lesser increment of Work, the fair overhead and profit percentage for greater quantities is usually different from the percentage for lesser quantities of Work, which would result in a credit to the Contract Sum. If such conditions exist on a Project, Section 3.8.2.2 may be modified accordingly.

§ 3.9 Superintendent

§ 3.9.2 During construction, coordination of mechanical and electrical Work may require additional attention to avoid conflicts. Specific technical requirements for coordination submittals are usually stated in the General Requirements (Division 1 of the Specifications). The language shown here deals with mechanical and electrical Work only, but may serve as a model if similar services are required with respect to other systems.

Add the following Section 3.9.2 to 3.9:

§ 3.9.2 The Contractor shall employ a superintendent or an assistant to the superintendent who will perform as a coordinator for mechanical and electrical Work. The coordinator shall be knowledgeable in mechanical and electrical systems and capable of reading, interpreting and coordinating Drawings, Specifications, and shop drawings pertaining to such systems. The coordinator shall assist the Subcontractors in arranging space conditions to eliminate interference between the mechanical and electrical systems and other Work and shall supervise the preparation of coordination drawings documenting the spatial arrangements for such systems within restricted spaces. The coordinator shall

assist in planning and expediting the proper sequence of delivery of mechanical and electrical equipment to the site.

§ 3.10 Contractor's Construction Schedules

§ 3.10.1 A detailed description of the Contractor's construction and submittal schedules (CPM, bar graph or other), the process by which they are to be prepared and updated, and the extent of information required should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.10.1.1 Fast-track Schedule Reporting "Fast-track" is the term applied to a process in which certain portions of the Architect's design services overlap with the Contractor's performance of the Work. This process can save time if the activities of the Owner, Contractor and Architect are closely coordinated. Coordination is vital, however, because changes may be expected in the Drawings and Specifications as construction proceeds. The costs of materials, equipment and labor may be changing as well. Note that use of the model language below may require appropriate modifications to the Owner-Architect Agreement.

Add the following Section 3.10.1.1 to Section 3.10.1:

§ 3.10.1.1 The Owner may authorize construction activities to commence prior to completion of the Drawings and Specifications. If the Drawings and Specifications require further development at the time the initial construction schedule is prepared, the Contractor shall 1) allow time in the schedule for further development of the Drawings and Specifications by the Architect, including time for review by the Owner and Contractor and for the Contractor's coordination of Subcontractors' Work, and 2) furnish to the Owner in a timely manner information regarding anticipated market conditions and construction cost; availability of labor, materials and equipment; and proposed methods, sequences and time schedules for construction of the Work.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The documents required here constitute "record documents" and their function is limited to showing actual changes made in the Work during construction.

Specific detailed requirements for record drawings, especially for mechanical and electrical portions of the Work, should be specified in the General Requirements (Division 1 of the Specifications), or the appropriate section of the Specifications. The term "as-built drawings" is ambiguous and should not be used because it makes the obligations of the Contractor and the Architect under Section 3.11.1 uncertain.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.5 Detailed procedures for handling Shop Drawings, Product Data and Samples (e.g., use of reproducibles, number of copies, identification and labeling, revision and resubmission procedures) should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.12.11 Review of multiple resubmittals can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 2.8.1.1 of AIA[®] Document B141[™]-1997), language such as that shown below may be appropriate.

Add Section 3.12.11 to Section 3.12:

§ 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and _____ (_____) resubmittals. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 3.13 Use of Site

§ 3.13.1 Detailed requirements may need to be specified in the General Requirements (Division 1 of the Specifications) if an existing building will remain occupied or require access by the public.

§ 3.14. Cutting and Patching

§ 3.14.1 Special requirements for Work involving renovation, remodeling, or historic restoration or other detailed requirements should be specified in Divisions 1-16 of the Specifications.

§ 3.15 Cleaning Up

§ 3.15.1 Detailed requirements for the cleaning should be specified in the General Requirements (Division 1 of the Specifications).

§ 3.18 Indemnification

In some jurisdictions statutory requirements may modify this indemnification section or void it completely. The Owner should seek the advice of legal counsel for modifications to this section.

If model language was added in Section 1.1 or 1.6 to address Drawings and Specifications in electronic form, the Owner would be well-advised to seek legal counsel to draft indemnification language for inclusion in Section 3.18 that would be enforceable in the applicable jurisdiction.

Article 4: Administration of the Contract

§ 4.1 Architect

If the Architect's construction administration duties vary from those identified in A201™–1997, use the following model language to identify the variations.

§ 4.1.2 The Architect's duties, responsibilities and limitations of authority are modified as follows:
(List or attach as an exhibit.)

§ 4.2 Architect's Administration of the Contract

Some clients, especially public authorities, may not engage the Architect for contract administration services or only for specified portions of them. In this situation, the entire Section 4.2 should be reviewed carefully and correlated with the provisions of the Agreement between Owner and Architect. The Architect should be especially alert to the possible delegation of the Architect's duties or authority to someone else, and should specify who will assume each function normally assigned to the Architect under this section. Other provisions of the General Conditions may have to be modified as well.

§ 4.2.2.1 AIA® Document B141™–1997 addresses instances when the Architect makes site visits as a result of Contractor actions. The following language may be added to the Supplementary Conditions for consistency between Section 4.2.2 of A201™–1997 and Section 2.8.1 of B141™–1997.

Add Section 4.2.2.1 to Section 4.2.1:

§ 4.2.2.1 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor.

§ 4.2.10 This modification advises the Contractor in advance that a Project Representative will be employed for the Project. In addition, a copy of AIA® Document B352™–2000, *Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative* which enumerates the duties, responsibilities and limitations of authority of the Project Representative, should be bound into the Project Manual or furnished separately to the Contractor.

Delete Section 4.2.10 and substitute the following:

§ 4.2.10 A Project Representative will be employed at the site by the Architect. The Project Representative's duties, responsibilities and limitations of authority are as set forth in AIA® Document B352™–2003, *Duties, Responsibilities and Limitations of Authority of the Project Representative*, a copy of which is bound in this Project Manual.

§ 4.3.7 Claims for Additional Time

On projects where time is especially critical, or where delays are especially likely to occur, the Owner may require added protection in this area. In the language suggested below, Section 4.3.7.3 strengthens the documentation requirements for Claims for additional time, and Section 4.3.7.4 requires the Contractor to demonstrate that the delay was on the critical path. It is advisable to further describe the scheduling, documentation and submittal timing required of the Contractor in Division 1 of the Specifications.

Add the following Sections 4.3.7.3 and 4.3.7.4 to Section 4.3.7:

§ 4.3.7.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the

Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 4.3.7.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

§ 4.3.10 Claims for Consequential Damages

Under this section, the Owner and Contractor waive consequential damages arising out of the Contract for Construction. Generally, a rule of law known as the economic loss doctrine would bar independent tort claims relating to the Contract. In some states, however, the economic loss doctrine has been weakened or discarded; in that situation the Architect (against whom the Contractor does not waive consequential damages) would be exposed to tort claims by the Contractor for such damages. Where the law of such a state applies, the following language (and, of course, compliance with the stated conditions) is recommended.

Add the following sentence to Section 4.3.10:

If, before expiration of 30 days from the date of execution for this Agreement, the Owner obtains by separate agreement and furnishes to the Contractor a similar mutual waiver of all claims from the Architect against the Contractor for consequential damages which the Architect may incur as a result of any act or omission of the Owner or Contractor, then the waiver of consequential damages by the Owner and Contractor contained in this Section 4.3.10 shall be applicable to claims by the Contractor against the Architect.

§ 4.6 Arbitration

The General Conditions do not require an arbitration to be held in any particular jurisdiction. If it is desired to require that the demand for arbitration be filed with a specific office of the American Arbitration Association and that the arbitration be held in a particular place, unless otherwise mutually agreed, this requirement should be stated in the Supplementary Conditions. These provisions should be reviewed by the Owner's legal counsel, in view of the variance of the rules with respect to such requirements from one jurisdiction to another.

§ 4.6.1 On some projects, the parties may wish to place a dollar limit on Claims subject to arbitration. The rationale for doing this is to make the procedural safeguards of the legal system available for Claims exceeding that specified amount. Possible drawbacks are the costs and delays involved in litigation.

Delete the period at the end of the first sentence of Section 4.6.1 and add:

, provided such Claim involves an amount less than or equal to _____ Dollars (\$_____).

Article 5: Subcontractors

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 If the principal Subcontractors are to be identified and selected prior to execution or award of the Contract, this should be set forth in the bidding requirements (e.g., AIA[®] Document A701[™]-1997, *Instructions to Bidders*). If this procedure is followed, it will be necessary to modify Section 5.2 to conform to the stipulations in the bidding requirements. This should be done by a supplement to this section. If the Owner wishes to take sub-bids on certain parts of the Work or to require the Contractor to employ certain Subcontractors or material suppliers chosen by the Owner, this should be explained in detail in the Instructions to Bidders.

§ 5.2.1.1 If the Owner wishes to review proposed manufacturers or fabricators, Section 5.2.1.1 should be included in the Supplementary Conditions. It is recommended that not more than 60 days be allowed; shorter times may be practicable on smaller projects.

§ 5.2.1.1 Not later than _____ days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers, fabricators or material suppliers for the products, equipment and systems identified in the General Requirements (Division 1 of the Specifications) and, where applicable, the name of the installing Subcontractor.

Article 6: Construction by Owner or by Separate Contractors

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.3 If separate contracts are to be awarded, or if the Owner's forces are to perform construction or operations related to the Project, Section 6.1.3 of the General Conditions requires that the Owner coordinate this construction with the Work of the Contractor. The details of this coordination should be set forth in the General Requirements (Division 1 of the Specifications), including the enumeration of those portions of the Work to be provided under this Article, and identification of separate contractors, when known.

Article 7: Changes in the Work

The modification of Section 7.1 applies only to contracts where the basis of payment is a stipulated sum, such as AIA® Document A101™–1997. They do not apply to contracts where the basis of payment is the cost of the Work plus a fee, such as AIA® Document A111™–1997.

§ 7.1.4 Overhead and profit may be stated separately or combined but, in either case, should distinguish between:

- a) The amounts to be paid to the Contractor for Work performed by the Contractor with that Contractor's own forces and for materials purchased directly by the Contractor (not through a Subcontractor).
- b) The amounts to be paid to the Contractor and Subcontractor for Work performed by the Subcontractor with that Subcontractor's own forces or purchased directly by that Subcontractor (not through a Sub-subcontractor).
- c) The amounts to be paid to the Contractor, Subcontractor and Sub-subcontractor for Work performed by the Sub-subcontractor with that Sub-subcontractor's own forces and for material and labor purchased by that Sub-subcontractor.

CAUTION: On some projects it may be desirable to add more specific information concerning items to be considered as part of "cost" as opposed to "overhead." Items that might be defined as one or the other may include costs for preparing Shop Drawings, reserves for future service liability, engineering and estimating costs, added costs for bonds and insurance, and travel and transportation expenses.

Add the following Section 7.1.4 to Section 7.1:

§ 7.1.4 The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, _____ percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, _____ percent of the amount due the Subcontractors.
- .3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, _____ percent of the cost.
- .4 For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, _____ percent of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$ _____ be approved without such itemization.

§ 7.3.6 If the amounts to be paid for overhead and profit on changes are to be established in the Contract Documents rather than being negotiated at the time of the changes, the figures to be used should be stated in the Supplementary Conditions.

Article 8: Time

§ 8.1 Definitions

§ 8.1.4 This modification is necessary if there is a requirement or preference to measure time related to the Contract in actual working days rather than calendar days.

Delete Section 8.1.4 and substitute the following:

§ 8.1.4 The term "day" as used in the Contract Documents shall mean working day, excluding weekends and legal holidays.

Occasionally an Owner will want no Work to be performed on certain days when Work might normally be carried on (i.e., special religious holidays); it would be appropriate to list these in a supplement to this section.

Article 9: Payments and Completion

§ 9.2 Schedule of Values

§ 9.2.1 Requirements concerning the format and data required for the schedule of values should be stated in the General Requirements (Division 1 of the Specifications), rather than by inserting language here to modify the General Conditions. A frequent requirement is that the schedule must be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a single line item on AIA® Document G703™–1992, *Continuation Sheet* for AIA® Document G702™–1992, *Application and Certificate for Payment*.

§ 9.3 Applications for Payment

§ 9.3.1 Detailed requirements concerning the format (and notarization, if required) of the Contractor's Application for Payment should be specified in the General Requirements (Division 1 of the Specifications) rather than by inserting language here to modify the General Conditions.

A frequent requirement is the use of AIA® Document G702™–1992, *Application and Certificate for Payment*, and G703™–1992, *Continuation Sheet*. Public authorities often have their own forms which must be used. There are unauthorized facsimiles of AIA documents G702™ and G703™ that the Architect can reject if the following language is used.

Add the following sentence to Section 9.3.1:

The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA® Document G702™–1992, *Application and Certificate for Payment*, supported by a current authorized edition of AIA® Document G703™–1992, *Continuation Sheet*.

The Owner may wish to consider the reduction of retained sums. Various methods for this procedure are set out in OPTIONS A and B which follow. OPTION C is used for constant retainage only. When reduction in retainage is provided for in the Supplementary Conditions, the Architect should recommend that the Agreement between the Owner and Contractor include (in Article 5 of AIA® Document A101™–1997) this supplement by reference rather than adding the language to the Agreement. This will avoid typographical or textual errors that could occur in the transcribing. Since reduction in retainage affects Subcontractors and certain material suppliers as well as the Contractor, the procedure recommended here for including this provision in the Supplementary Conditions is considered preferable to describing the reduction arrangement in the Owner-Contractor Agreement. The terms and conditions of the Agreement are not generally made available to other interested persons, but the Supplementary Conditions should be.

OPTION A

Option A provides for progress payments in full to the Contractor after the Work is 50% complete. This method can have the disadvantage of applying retainage unequally to the Subcontracts, requiring full retainage on Work performed during the early stages of construction while the amount of retainage withheld on Work in the later stage of construction may be reduced or perhaps even eliminated. The net effect of this method is a sliding reduction to 50% of the basic retainage at the time of Substantial Completion. This supplement should be coordinated with Section 9.8.5.

Add the following Section 9.3.1.3 to Section 9.3.1:

§ 9.3.1.3 Until the Work is 50 percent complete, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments. At the time the Work is 50 percent complete and thereafter, the Architect will authorize remaining partial payments to be paid in full.

OPTION B

Option B provides for line item retainage. This method applies retainage and any reduction thereof equally to all phases of the Work. Thus, early finishing Subcontractors (e.g. foundations, structural steel) can have their retained funds reduced when they have satisfactorily performed 50% of their Subcontracts without waiting for the entire Project to be 50% complete. This supplement should be coordinated with Section 9.8.5 because that section requires release of retainage at Substantial Completion.

Add the following Section 9.3.1.3 to Section 9.3.1:

§ 9.3.1.3 Until final payment, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments. For each Work category shown to be 50 percent or more complete in the Application for Payment, the Architect will, without reduction of previous retainage, certify any remaining progress payments for each Work category to be paid in full.

OPTION C

Option C is used if payment to the Contractor will be made with a constant percentage retained until the Date of Substantial Completion. The percentage called for here and that shown in Article 5 of AIA® Document A101™–1997, the Agreement between the Owner and Contractor, must be identical.

Add the following Section 9.3.1.3 to Section 9.3.1:

§ 9.3.1.3 Until Substantial Completion, the Owner shall pay _____ percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 If it is not intended that stored materials and equipment, either on or off the site, will be paid for until incorporated in the Work, this section needs to be modified appropriately. This should also be reflected in the provisions of Article 5 of AIA® Document A101™–1997, the Agreement between the Owner and Contractor, which must likewise be modified to omit reference to stored materials. In addition, modifications should also be made to Section 11.4.1.4.

§ 9.4 Certificates for Payment

§ 9.4.2 If the Agreement between the Owner and Contractor is other than on a stipulated-sum basis (such as cost-plus-fee where payments are made based on invoices or vouchers submitted to the Architect), this section should be qualified to limit the extent and meaning of the Architect's Certificate for Payment.

§ 9.6 Progress Payments

Placing retained funds in an escrow account that earns interest provides a method of compensating the Contractor for money earned but not made available for the Contractor's use. Several government entities have enacted legislation requiring escrow accounts for retainage on public work, but it can be equally appropriate for private projects. Before using this supplement, the Owner's legal counsel must review it for conformance with local laws. An escrow account can be used with all the various methods of retainage recommended above.

Add the following Sections 9.6.8 through 9.6.14 to Section 9.6:

§ 9.6.8 Upon commencement of the Work, an escrow account shall be established in a financial institution chosen by the Contractor and approved by the Owner.

§ 9.6.9 The escrow agreement shall provide that the financial institution will act as escrow agent, will pay interest on funds deposited in such account in accordance with the provisions of the escrow agreement and will disburse funds from the account upon the direction of the Owner as set forth below. Compensation to the escrow agent for establishing and maintaining the escrow account shall be paid from interest accrued in the escrow account.

§ 9.6.10 As each progress payment is made, the retainage with respect to that payment shall be deposited by the Owner in the escrow account.

§ 9.6.11 The interest earned on funds in the account shall accrue for the benefit of the Contractor until the date of Substantial Completion. Interest earned after such date shall accrue for the benefit of the Owner. Cost of compensation to the escrow agent paid out of interest earned shall be borne by the Contractor.

§ 9.6.12 When the Contractor has fulfilled all of the requirements of the Contract providing for reduction of retained funds, the escrow agent shall release to the Contractor one-half of the accrued funds but none of the interest thereon. When the Work has been fully completed in a satisfactory manner and the Architect has issued a final Certificate for Payment, the escrow agent shall pay to the Contractor the full amount of funds remaining in the account, including net balance of the interest paid to the account, but less any interest that may have accrued for the benefit of the Owner, which shall be paid to the Owner.

§ 9.6.13 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the escrow agent shall make payment to the Contractor as provided in Section 9.10.3.

§ 9.6.14 Sums owed to the Owner by the Contractor may be deducted from payments otherwise due the Contractor pursuant to Article 9.

§ 9.8 Substantial Completion

§ 9.8.1 If designated portions of the Work are to be accepted separately by the Owner, include appropriate information in the General Requirements (Division 1 of the Specifications).

§ 9.8.3.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 2.8.1.3 of AIA® Document B141™–1997), the following language may be appropriate.

Add the following Section 9.8.3.1 to Section 9.8.3:

§ 9.8.3.1 Except with the consent of the Owner, the Architect will perform no more than _____ (_____) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections.

§ 9.8.5 Section 9.8.5 of A201™–1997 requires release of all retainage on completed Work at Substantial Completion. If it is intended instead that a partial release be made, the following modification may be used to indicate the percentage. It is important to coordinate with Section 9.3.1.3.

§ 9.8.5 Delete the second sentence and substitute the following:

Upon such acceptance and consent of surety, if any, the Owner shall make payment sufficient to increase the total payments to _____ percent (____%) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims.

§ 9.10.1.1 Multiple reinspections can be a serious drain on the Architect's time and other resources. If the Architect is entitled to an adjustment in compensation for such services under the Owner-Architect agreement (for example, under Section 2.8.1.4 of AIA® Document B141™–1997), the following language may be appropriate.

Add the following Section 9.10.1.1 to Section 9.10.1:

§ 9.10.1.1 Except with the consent of the Owner, the Architect will perform no more than _____ (_____) inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections.

§ 9.11 Liquidated Damages

CAUTION: Such a provision would normally appear in the Agreement; for example, space is provided in the Agreement between the Owner and Contractor (AIA® Document A101™–1997) under Article 3, relating to time, for insertion of appropriate terms and conditions related to liquidated damages. However, it is important for Subcontractors and others to be aware of such a provision, and it is not unusual for this requirement to be set out in the Supplementary Conditions.

The language shown here is a suggested guide. It should not be included as Supplementary Conditions without review by the Owner's attorney and concurrence of the Owner. Repetition should be avoided. If the provision is written in the Supplementary Conditions, a cross-reference should appear in Article 3 of the Agreement between the Owner and Contractor.

Care must be taken to avoid even the appearance that a provision is used to extract a penalty rather than for liquidated damages. Liquidated damages are enforceable if the amount inserted into Section 9.11.1 is a reasonable measure of the anticipated harm. An advantage of liquidated damages is the elimination of the cost entailed to prove the actual damages.

On the other hand, if the amount inserted into Section 9.11.1 is grossly disproportionate to the anticipated harm or if there is no anticipated harm, the provision may be deemed a penalty and unenforceable by a court. Penalties in contracts are not generally enforceable because of the public policy that the use of a court to inflict punishment is a function of society to discourage criminal and other antisocial behavior and should not inure to the benefit of an individual using a private agreement. The few exceptions to this policy are typically made by statute and grant authority to public entities, such as cities and municipalities, to enforce forfeiture of posted bonds. It is not a good idea to use the term "penalty" in Supplementary Conditions. The model language below assumes substantial completion of the entire Work.

It is necessary to ensure that liquidated damages are not speculative and do not conflict with the mutual waiver of consequential damages in Section 4.3.10.

Add the following Section 9.11 to Article 9:

§ 9.11 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 after the date established for Substantial Completion in the Contract Documents until the Work is substantially complete:

_____ Dollars (\$_____)

§ 9.12 Bonus

This is an example of a bonus provision which may be counterbalanced with a liquidated damages provision such as that shown in Section 9.11. Often such a provision is erroneously referred to as a "penalty bonus" provision. To overcome the public policy objection against penalties in contracts, some believe that a bonus counterpoint will cause a court to look more favorably on a penalty. The liquidated damages provision becomes a penalty when an arbitrarily high amount is inserted into the provision to add pressure on the Contractor to complete the Work within the Contract Time. There is little or no legal precedent to support this proposition of linking a bonus with a penalty.

It is not a recommended practice to employ such a section without specific advice from local legal counsel. Bonus provisions should be used only when the Owner will obtain a specific benefit if the Contractor completes the construction prior to the time set for Substantial Completion. On occasion the Owner may not desire early completion because of the timing requirements of other commitments, such as mortgage closings or the commencement of tenant leases. The model language below assumes substantial completion of the entire Work.

Add the following Section 9.12 to Article 9:

§ 9.12 Bonus

§ 9.12.1 The Owner shall pay as a bonus to the Contractor a sum of _____ Dollars (\$_____) for each calendar day preceding the date established for Substantial Completion in the Contract Documents that the Work is determined to be substantially complete by the Architect.

Article 10: Protection of Persons and Property

§ 10.2 Safety of Persons and Property

§ 10.2.4 It is usually desirable that the Owner and Contractor inform each other of known potential hazards on the site. The Owner and Contractor may be held liable to third parties who are harmed by them, and may therefore wish to take precautions against unauthorized access.

Add the following Section 10.2.4.1 to Section 10.2.4:

§ 10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

The Contract Documents may require the Contractor to handle materials that under certain circumstances may be designated as hazardous.

Add the following Section 10.2.4.2 to Section 10.2.4:

§ 10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

§ 10.3 For renovations, remodeling, or work on an existing site, disclosure language may be needed that requires the Owner to notify the Contractor of possible hazardous materials, such as lead or fiberglass, on the site. In addition, supplementary language may be added requiring the Contractor to comply with all applicable statutes in working with such materials. Coordinate with Article 11 regarding insurance for special hazards or pollutants.

Materials that the Contractor alleges to be hazardous should be handled in an appropriate manner in accordance with the model language provided for Section 10.2.4.

Article 11: Insurance and Bonds

Caution: The Architect is not qualified as an insurance counselor, and the architect's professional liability insurance may not cover providing insurance advice. For that reason, the architect is cautioned not to make recommendations about insurance or approve insurance certificates or policies. It is in the best interests of all parties that insurance matters be placed in the hands of the Owner's insurance counselor. See the AIA Architect's Handbook of Professional Practice for additional information regarding the insurance protection required under Article 11.

The Owner's insurance counselor must review the Contractor's submittals regarding insurance to determine that the required coverages are in place.

§ 11.1 Contractor's Liability Insurance

§ 11.1.1.1 In some states, some business entities may not be required by statute to carry worker's compensation insurance. Such exempted employers, however, can be required by the Contract Documents to maintain voluntary compensation coverage. The Owner's insurance advisor should determine whether or not this coverage should be a contract requirement. In most states, an exempted employer, by maintaining such voluntary coverage, is entitled to indemnity from normal tort liability and is not subject to other tort liability to employees for job-related injuries.

In addition to each state having applicable workers' compensation laws, federal and foreign laws may apply to the Contractor's or Subcontractor's employees. Where the Work includes construction involving the following categories, specific coverage may be required: maritime work, longshoremen, harbor work, work at or outside U.S. boundaries, and benefits required by labor union contracts.

§ 11.1.1.1 Delete the semicolon at the end of Section 11.1.1.1 and add:

, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

§ 11.1.1.2 This requires Employers' Liability Coverage, which is normally afforded as separate coverage under the workers' compensation policy, but evidence of such coverage should be shown on the certificate of

insurance. If the modification to Section 11.1.1.1 shown above is used, this modification to Section 11.1.1.2 must be used as well.

§ 11.1.1.2 Delete the semicolon at the end of Section 11.1.1.2 and add:
or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that section;

§ 11.1.1.4 There is a difference between the bodily injury coverage required in Section 11.1.1.3 and the personal injury coverage required by this section. Bodily injury is, as its name implies, physical harm to a person, including death, while personal injury includes libel, slander, false arrest and similar wrongs. Both bodily and personal injury coverages are required; hence the need for a careful review of the original insurance certificates by the Owner's insurance counselor.

§ 11.1.1.6 Business Auto Liability Insurance is normally issued as a separate policy. It is generally advisable to have this policy and the Commercial General Liability policy written by the same insurance company to avoid disputes as to which insurer is responsible for a particular loss.

§ 11.1.1.7 Products and Completed Operations insurance is specified to cover claims arising out of or resulting from the Contractor's operations when the injury or damage occurs after the Contractor's Work at the site has been completed, the Project has been put to its intended use and the Contractor is no longer at the site.

§ 11.1.1.8 In some jurisdictions statutory requirements may modify the indemnification section of Section 3.18 or void it completely. The Owner should seek the advice of legal counsel for modifications to Section 3.18 or this Section 11.1.1.8.

§ 11.1.1.9 Some projects or jurisdictions may require special types of coverages. The Owner should seek the advice of insurance counsel for the nature of coverage required. The coverages listed below are common on construction projects:

1. Premises-Operations
2. Independent Contractors' Protective
3. Products-Completed Operations
4. Personal Injury Liability
5. Contractual Liability
6. Personal and Advertising Injury
7. Owned, Non-Owned and Hired Motor Vehicles
8. Excess or Umbrella Liability

§ 11.1.2 The following supplements represent sample modifications. It is recommended that the Architect use AIA[®] Document G612[™]-2001, *Owner's Instructions Regarding the Construction Contract, Insurance and Bonds, and Bidding Procedures*, requesting the Owner to furnish to the Architect such information as well as forms of coverages required when this information needs to be included in the Contract Documents. While location, size and potential exposure have bearing on the limits of coverage for each project, it must be remembered that serious injury or loss of life may result in the same amount of damages no matter what the size, cost or location of the project. **THE OWNER, NOT THE ARCHITECT, MUST ESTABLISH THE AMOUNTS AND TIME LIMITS OF INSURANCE REQUIRED BY THIS ARTICLE 11.**

Explanatory material about Workers' Compensation is provided in Sections 11.1.1.1 and 11.1.1.2 above. A period of time should be stated for Products and Completed Operations insurance, commencing with issuance of the final Certificate for Payment, during which this insurance will be kept in force. The procedure for ascertaining continuation of this coverage is set out in Section 9.10.2.

The Commercial General Liability (CGL) policy combines several coverage aggregates into a single General Aggregate; this is the maximum amount that will be paid under the policy. The General Aggregate may be modified to apply to an individual project, and this endorsement should be called for as shown in the suggested language. Note that the "per project" limit of liability called for in Subclause 11.1.2.2.2 requires an endorsement amending the standard CGL policy. In some circumstances, this may be difficult to obtain.

If Umbrella or Excess Liability insurance coverage is required over the primary insurance, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella or Excess Liability policies.

Add the following Sections 11.1.2.1 through 11.1.2.4 to Section 11.1.2:

§ 11.1.2.1 The limits for Worker's Compensation and Employers' Liability insurance shall meet statutory limits mandated by State and Federal Laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

§ 11.1.2.2 The limits for Commercial General Liability insurance including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

\$ _____ Each Occurrence
\$ _____ General Aggregate
\$ _____ Personal and Advertising Injury
\$ _____ Products-Completed Operations Aggregate

.1 The policy shall be endorsed to have the General Aggregate apply to this Project only.

.2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA® Document A201™-1997 under Section 3.18.

.3 Products and Completed Operations insurance shall be maintained for a minimum period of at least _____ (__) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.

§ 11.1.2.3 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$ _____ Each Accident

§ 11.1.2.4 Umbrella or Excess Liability coverage:

§ 11.1.3 If a Commercial General Liability form is used for this insurance, ACORD form 25-S is written specifically to list required coverages under those policies.

§ 11.1.3 Add the following sentence to Section 11.1.3:

If this insurance is written on a Commercial General Liability policy form, the certificates shall be ACORD form 25-S, completed and supplemented in accordance with AIA® Document G715™-1991, *Instruction Sheet and Supplemental Attachment for ACORD Certificate of Insurance 25-S*.

§ 11.3 Project Management Protective Liability Insurance

If the Contractor will be required to carry Project Management Protective Liability insurance, this section must be modified since, as written, this insurance is optional. The Owner should first confirm that this coverage is available in the jurisdiction of the Project.

§ 11.3.1 Delete Section 11.3.1 and substitute the following:

§ 11.3.1 The Contractor shall purchase and maintain Project Management Protective Liability insurance, from the Contractor's usual sources, as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. The Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability for such coverage shall be equal to the aggregate limits required for Contractor's liability insurance under Sections 11.1.1.2 through 11.1.1.5.

§ 11.4 Property Insurance

During preparation of the Supplementary Conditions the Owner's insurance counselor should carefully compare the terms of Section 11.4 with the actual policy form to be purchased to make certain all requirements for property insurance are, or can be, met, and certainly before any major changes in these requirements are proposed. If modifications are desirable, all other sections and sections of Section 11.4, in addition to the one being changed, should be reviewed and conflicting requirements reconciled. Every effort should be made to obtain the broadest protection possible.

This section, as it appears in the General Conditions, requires the Owner to provide the property insurance on an "all-risk" or equivalent policy form. "All-risk" is the term commonly used to refer to a policy that includes coverage for earthquake, flood and windstorm; testing and start-up may be included in the policy or by separate endorsement. The actual policy form is now called open perils.

The supplements suggested in this Guide are in two parts: OPTION A, modifications to Section 11.4 as written; and OPTION B, modifications to Section 11.4 when the Contractor is required to furnish this coverage.

When considering the use of Option B, it is important to consider that, by the terms of Section 9.3.3 of the General Conditions, Work completed and paid for is the property of the Owner and insurance proceeds for such property damaged or destroyed by a covered loss are rightfully the Owner's. Special consideration should be given to property insurance requirements when the Project involves additions or alterations to existing buildings.

Other exclusions under the property insurance for which waivers may be equally desirable are those that relate to claims based upon the Architect's professional acts or omissions or to claims based upon the Contractor's faulty workmanship or materials. Such exclusions are typically standard in most property insurance policies.

The amount for property insurance coverage is established in this section as being equal to the Contract Sum, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis. There may be occasions when an Owner is advised to carry less insurance, in which instance the Contractor must be so advised in the Supplementary Conditions so that the Contractor can include the cost of any additional necessary coverage in the Contract Sum.

As previously noted, A201™–1997 requires insurance for physical loss or damage on an "all-risk" or equivalent policy form. Since these policies vary in their exclusions, it is important for the Owner's insurance counselor to carefully review the policy that may be used to be certain it provides the desired protection. If any of the excluded risks are to be included in the coverage by endorsement, they should be specifically noted here so that the Contractor and Subcontractors will be aware of the extent of the coverage.

An example of when removal of an excluded risk might be necessary is in regard to theft coverage. Most "all-risk" policy forms include coverage for theft of materials and equipment (excluding the Contractor's own equipment) stored on the site or in transit. However, some policies may restrict the theft protection to property that is an integral part of a building or structure. In this case, the Owner normally can obtain expanded coverage to provide the necessary protection for materials and equipment stored on the site but not yet incorporated in the Work. If the Owner does not obtain this coverage, then the Contractor should be required to obtain an installation floater to make certain the necessary insurance is in effect. If the Project is located in a high crime area, it may not be possible, or financially feasible, to acquire theft insurance.

Certain policy forms prohibit any waiver of the insured's rights. When this is the case, it is necessary to provide a further endorsement to acknowledge the contractual provision for waiver of subrogation (Section 11.4.7, A201™–1997) before any loss occurs.

OPTION A

(When the Owner carries property insurance as required by AIA® Document A201™–1997)

§ 11.4.1.3 Most property or fire insurance policies are written with a deductible. This section describes how deductibles are to be handled. It is necessary to show amount of deductible per occurrence unless no

deductible is, or will be, established in the policy, in which case the added sentence would read, "This property insurance shall be written with no deductibles." There is no need to identify the voluntary deductibles described in this Section 11.4.1.3 since they will be paid by the Owner in the event of an insured occurrence.

§ 11.4.1.3 Add the following sentence to Section 11.4.1.3:

This property insurance is written with a deductible of \$_____ per occurrence with a deductible aggregate of \$_____.

§ 11.4.1.4 If the Owner does not intend to secure coverage for off-site storage or materials in transit, the Contractor must be advised so that this coverage can be obtained. See also Section 9.3.2.

Delete Section 11.4.1.4 and substitute the following:

§ 11.4.1.4 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the Work.

The property insurance is to cover the entire Work, which is defined under Section 1.1.3 as including "all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations." The following provision clarifies the Contractor's responsibility to provide insurance coverage for the Contractor's machinery, tools and equipment that remain the property of the Contractor upon completion of the Project.

Add the following Section 11.4.1.6 to Section 11.4.1:

§ 11.4.1.6 The insurance required by Section 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Section 11.4.7.

OPTION B

(When the Contractor is required to carry the property insurance, the following modifications to Sectioning 11.4 should be included.)

Because deletion of Sections 11.4 in its entirety and substitution of a simplified single paragraph requiring the Contractor to carry this insurance (a frequent method used to effect this change) results in omission of important statements, it is recommended that Section 11.4 be modified only where appropriate, with the balance of the wording left intact. The following discussion of the sections under Section 11.4 is offered as a guide for use under those circumstances.

Separate contractors other than the designated Contractor should be reminded of the necessity for Inland Marine coverage in the event of the need to insure their materials and equipment in transit. If a Project includes two or more buildings, each under separate contract, and the Owner does not intend to provide a single policy covering all buildings, each separate contractor should be required to carry the property insurance covering that contractor's Work on the Project. Possible areas of duplication of coverage should be assigned to one specific separate contractor.

The Owner's insurance counselor should carefully evaluate the possible advantages or disadvantages if separate insurance is being provided by more than one contractor under the above circumstances. Under certain circumstances, it is possible that the Contractor may be unable to obtain "all-risk" insurance, or would propose providing named-perils property insurance. In this situation, the Owner's insurance counselor would be well-advised to have the Contractor consider supplementing the named-perils property insurance policy with a Difference In Conditions contract (D.I.C.) to make the named-perils policy coverage consistent with the "all-risk" requirement.

If the Owner does not intend to carry the property insurance, the Supplementary Conditions should designate which Contractor shall purchase this coverage.

§ 11.4.1 Modify the first sentence of Section 11.4.1 as follows: Delete "Unless otherwise provided, the Owner" and substitute "The Contractor." Add the following sentences:

If the Owner is damaged by the failure of the Contractor to purchase and maintain such insurance without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs attributable thereto.

§ 11.4.1.2 Delete Section 11.4.1.2.

Since the Owner pays the deductible when responsible for property insurance, it may be advisable to modify Section 11.4.1.3 when the Contractor is responsible for purchasing and maintaining the property insurance.

§ 11.4.1.3 Modify Section 11.4.1.3 by substituting "Contractor" for "Owner."

§ 11.4.4 Since it relates to the Contractor's own insurance requirements, this section can be omitted. Delete Section 11.4.4.

§ 11.4.6 Modify Section 11.4.6 by making the following substitutions: (1) in the first sentence, substitute "Contractor" for "Owner" and "Owner" for "Contractor," and (2) substitute "Owner" for "Contractor" at the end of the last sentence.

§ 11.4.7 Modify Section 11.4.7 by substituting "Contractor" for "Owner" at the end of the first sentence.

§ 11.4.8 Modify Section 11.4.8 by substituting "Contractor" for "Owner" ; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "Owner's."

§ 11.4.9 Modify Section 11.4.9 by substituting "Contractor" for "Owner" each time the latter word appears except in the last sentence.

§ 11.4.10 Modify Section 11.4.10 by substituting "Contractor" for "Owner" each time the latter word appears.

§ 11.5 Performance Bond and Payment Bond

The requirements for a Performance Bond and Payment Bond should be noted in the Instructions to Bidders. (See AIA[®] Document A701[™]–1997, *Instructions to Bidders*.)

The amount of the bonds should be determined by the Owner's legal counsel.

Delete Section 11.5.1 and substitute the following:

§ 11.5.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to _____ percent of the Contract Sum.

§ 11.5.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.5.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

Article 12: Uncovering and Correction of Work

§ 12.2 Correction of Work

§ 12.2.2 Note that the time limit of one year within which the Contractor is obliged to correct the Work may be modified by special warranties required by the Contract Documents. This one-year time limit should not be construed as a limitation of the Contractor's warranty under Section 3.5.1.

Section 2.7.2 of AIA[®] Document B141[™]–1997 provides for a meeting to be held with the Owner, Owner's Designated Representative and the Architect prior to the expiration of one year from the date of Substantial

Completion to review facility operations and performance and to make appropriate recommendations. It may be desirable to require the Contractor to attend this meeting, as the recommendations from this meeting may form the basis for the written notice required by Section 12.2.2.1 of A201™–1997 of Work that is not in accordance with the Contract Documents.

Add the following Section 12.2.2.4 to Section 12.2.2:

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

Article 13: Miscellaneous Provisions

§ 13.5 Tests and Inspections

§ 13.5.1 If the Owner is to employ the testing agency directly and pay for any inspections, tests or approvals other than those conducted by public authorities, this should be stated in the General Requirements (Division 1 of the Specifications) or elsewhere in the Specifications rather than by inserting language here to modify the General Conditions.

§ 13.6 Interest

§ 13.6.1 Usury laws and requirements under the Federal Truth in Lending Act, similar consumer credit laws at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.

§ 13.8 The Architect must be alert to provisions of local non-discrimination and affirmative action statutes in force at the Project location. If a supplementary condition is required, it should be added as Section 13.8.

Article 14: Termination or Suspension of the Contract

§ 14.4 Many Owners reserve to themselves the right to terminate the Contract for convenience, that is, without cause. Termination for convenience is provided for in A201™–1997, but not in all AIA General Conditions.