

# Forms of Agreement: Which Should You Use?

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## **CONSULT YOUR ATTORNEY**

The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to owner-architect agreements.

## **SUMMARY**

Agreements are made in many different ways— orally; through the written word; or with purchase orders, client-generated forms, continuing service contracts, and standard contract forms. A good agreement minimizes confusion between architects and their clients by providing clear and concise definitions. A review of various forms of agreement shows that the standard contract form considers the interests of both clients and architects and reduces risk for both parties.

## **AGREEMENT FORMS REQUESTED BY CLIENTS**

Clients often want to use their own contract forms, purchase orders, oral agreements, or continuing service agreements to contract for professional services. Each of these forms of agreement may introduce risks for both the architect and the client. Clearly defining the relationship and the quality and scope of the architect's services is in the interest of both parties. Ad hoc agreements may contain ambiguities that may result in later misunderstandings or disputes.

## **STANDARD CONTRACT FORMS**

A standard form of professional service agreement may provide protections for both the architect and the client, helping to reduce the risk for both parties. Standard forms of agreement typically reflect the collective experience and wisdom of many professional experts. They contain language that may anticipate and address in advance the types of circumstances that commonly lead to misunderstandings or disputes in relationships between owners and architects. Standard contract forms allow owners and architects to benefit from this collective experience and wisdom.

The AIA offers a variety of contract forms that correspond to most methods of project delivery and to varying levels of service. Standard forms are more likely to articulate the rights and responsibilities of each party clearly and unequivocally, which may enable the parties to avert the common pitfalls that often result from the use of ad hoc agreements. At the very least, it is highly advisable for the architect and the client to discuss the pros and cons of the specific provisions of a standard form of agreement. Such a discussion may illuminate issues that the parties may not have previously considered and bring to the surface previously unspoken differences in assumptions that should be resolved in advance to the mutual satisfaction of both parties and agreed upon in writing.

## **THE VALUE OF A WRITTEN AGREEMENT**

A detailed, written agreement between the architect and the client may minimize confusion, uncertainty, and dissatisfaction. A good contract defines the scope of services, the overall relationship, the system of communication, the standard of care, and the rights and responsibilities of both parties. Oral agreements, or written agreements that do not accurately represent the understanding of the parties, increase the likelihood of misunderstandings, disputes, and litigation.

All forms of agreement should clearly express the intent of the parties. Confusing contract language does not serve as a useful, reliable guide for providing professional services. Terms, if not well defined, revert to their dictionary meanings, which may create obligations far different from those assumed by the architect. The following forms of agreement present special concerns:

### **Client-generated forms**

Client-generated forms of agreement should be examined closely to determine whether they define, in unequivocal language, the standard of care; equity in, the assignment of duties, authority, and risk; and scope of services.

### Oral agreements

Some design firms practice without written agreements. Oral contractual relationships, however, while often valid and binding (depending on applicable state law), may result in an ambiguous interpretation of the scope of services and varying expectations on the part of each party. If the parties to an oral agreement believe that the terms of their agreement are clear, it should not be difficult to memorialize those terms in a short-form contract. The exercise of doing so can be illuminating.

### Purchase orders

Most purchase orders are intended for product procurement and include product liability or express warranty provisions that are inappropriate for professional services. In addition, they seldom identify the scope of professional services. If a client insists on using a purchase order to procure design services, insist that it refer to the terms and conditions of a professional services agreement that you have negotiated with your client to supersede the product liability and warranty language that most purchase orders contain.

### Continuing service contracts

A long-term service arrangement with a client can negate the application of a statute of repose or statute of limitations, create a duty to advise a client of a change in codes or standards, and result in undue risk. Continuing service agreements need to be carefully written to allow an adjustment in scope and fee for changed circumstances and to help ensure that the risk is commensurate with the fee.

### Sources of Consensus Agreement Forms

The AIA publishes standard or model agreement forms. The AIA forms range from very specific (e.g., AIA Document B155™ – 1993, Standard Form of Agreement Between Owner and Architect for a Small Project) to easily tailored (e.g., AIA Document B163™ – 1993 Standard Form of Agreement Between Owner and Architect for Designated Services). The AIA involves client groups and construction associations in the development of their documents to help ensure that the interests of all parties are acknowledged. The documents are accompanied by commentaries—such as the AIA B141™ Commentary—that help both architects and clients to understand the standard language or to modify it to meet their specific needs. In addition, standard documents and commentaries may serve as useful guides in crafting fully customized agreements.

## RESOURCES

### More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 18.02.02 Owner-Architect Agreements for Small Projects
- 18.02.03 Before You Sign: An Owner-Architect Agreement Checklist
- 17.01.01 Reviewing Owner-Supplied Agreements

### For More Information on This Topic

See *Architect's Essentials of Contract Negotiation*, by Ava J. Abramowitz, Esq., an indispensable guide for any architect who wishes to develop an effective personal negotiation style and master the skills of contract negotiation. It can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by sending e-mail to [bookstore@aia.org](mailto:bookstore@aia.org).



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