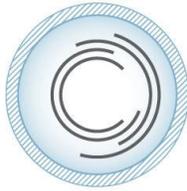


**ConsensusDocs™**  
BUILDING A BETTER WAY

# **ConsensusDocs Guidebook**

## **ConsensusDocs 703 – Purchase Agreement for Noncommodity Goods**

August 2013 Edition



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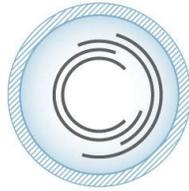
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## **Introduction to the ConsensusDocs Guidebook**

ConsensusDocs is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The 36 participating associations represent Design Professionals, Owners, Constructors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDocs. ConsensusDocs contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control the risk. The practices articulated in the documents are forward-thinking, and may not always represent the status quo, but rather a better path forward to achieve project results. The goal of the multi-disciplined drafters was to create documents that best place the Parties to a construction contract in a position to complete a project on time and on budget with the highest possibility of avoiding claims.

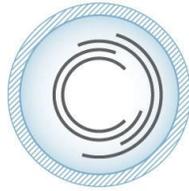
By starting with better standard documents that possess buy-in from all stakeholders in the design and construction industry, you reduce your transaction time and costs in reaching a final Agreement. By using fairer contracts helps eliminate unnecessary risk contingencies and thereby better pricing. In addition, “fill-in-the-blanks” are intended to lead to productive discussions about how particular risks should be allocated on specific projects before a contract is finalized.

Also, the ConsensusDocs catalog includes complete “families” of documents for each project delivery method that provide a coordinated set of Agreements and complimentary administrative forms. There also are short form agreements that address the Owner-Constructor (205), the Owner-Design Professional (245), and the Constructor-Subcontractor contractual relationships in a more abbreviated manner than do the standard Agreements (ConsensusDocs 200, 240, and 750 respectively).

In this Guidebook you will find comments by individual associations regarding particular contract documents. These comments are organized by numeric sequence of the ConsensusDocs contract documents. The overview sections highlight issues and innovative features of the documents generally. Association comments are expressions by an association to its association membership. These comments highlight provisions or alert their membership to consider possible project-specific modifications to a consensus standard Agreement or form. ConsensusDocs contracts covered in this release of this Guidebook include the 200, 200.1, 200.2, 205, 220, 221, 235, 240, 260, 246, 261, 262, 263, 298, 300, 301, 310, 410, 415, 450, 460, 470, 471, 472, 473, 500, 702, 703, 710, 750, 752, and 803.

Please note that there has been a significant number of editing changes and section renumbering between the 2007 and 2011 versions that give the appearance that more substantive changes were made in the 2011 update than is actually the case. Consequently, a highlight sheet of changes was created to better pinpoint substantive changes. The 2011 update highlights sheet can be found [here](#) for free on the internet.

Lastly, the ConsensusDocs coalition organizations and ConsensusDocs staff are deeply indebted to the hard work of the many the seasoned professionals who contributed countless hours in the creation of the ConsensusDocs contracts as well as this Guidebook. Their collective experience represents hundreds of years of practical experience in the construction field. Contributor names can be found at the conclusion of this Guidebook.



## **Comments and Recommendations regarding ConsensusDocs 703\* Purchase Agreement for Noncommodity Goods**

Materials and Equipment (article 2): Include plan and specification references with specific sections, and incidental services, as applicable.

Price (article 3): Sales and use taxes have been separated from the overall Agreement price so as to reduce bonding costs, which are based on the overall Agreement price.

Exhibits and Documents (article 4): “Buyers should be aware that the practice of attaching the Seller’s form of standard terms and conditions to a Purchase Order or Purchase Agreement may be deemed ‘assent’ in some jurisdictions. Buyers should consult with legal counsel regarding the effect of attachment of the Seller’s terms and conditions. It is recommended that agreed terms and conditions be set out in an attachment to the Purchase Order by listing agreed Clarifications and Exceptions.”

Shipping (article 11): If shipping instruction change they may cause a change pursuant to the Changes article.

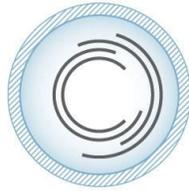
Termination for Convenience (article 15): The reference to cost plus percentage for overhead includes engineering goods that haven’t been delivered and are fabricated for a specific project. A routine product that can be restocked or potentially recover some of the value would led to a lower charge under this provision.

Warranty (article 16): This includes including any implied warranty of merchantability or fitness for a particular purpose.

Payment and Liens (article 17): Recommend that Owner and Buyer attach an acceptable lien waiver form to this Agreement.

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\* This publication is designed to provide information in regard to the subject matter covered. It is published with the understanding that the publisher, endorsers of ConsensusDocs and contributors to this Guidebook are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional advice is required, the services of a competent professional person should be sought.



Indemnity (article 20): This provision does not address if the product is used for purposes that are not originally intended. Misuse of a product would potentially be determined in litigation and is project specific.

Compliance with Laws (article 23): Add in Notes section, Indicated in article 1.

Governing Law (article 26): Users may wish to modify this section depending upon the local jurisdiction of the project. Jurisdictions with unique state laws may cause the parties to scrutinize and negotiate which jurisdiction's laws should govern the project.

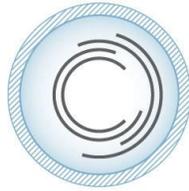
Binding Dispute Resolution (section 27.4): Users may wish to modify this section depending upon the local jurisdiction of the project. Jurisdictions with unique state laws may cause the parties to scrutinize and negotiate which jurisdictional laws should govern this contract.

Section 27.5: Users may wish to provide for a definition of prevailing party. The force and effect of such definition may vary based on state law. One possible example is as follows:

If a party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming party shall be the prevailing party. If a party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming party, then the party so defending against such claim shall be the prevailing party. If both parties prevail with respect to different claims by each of them, then the party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing party; otherwise, if both parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or action shall in rendering the award determine in its discretion whether either party should be entitled to recover any portion of its attorney fees.

Venue (section 27.6): Users may wish to modify this section depending upon the local jurisdiction of the project. Jurisdictions with unique state laws may cause the parties to scrutinize and negotiate which jurisdictional laws should govern this contract.

Limitation of Liability (article 29): This is a critical provision that User should select carefully. Endorsing organizations have to provide additional comments on this point.



**AGC Comments for ConsensusDocs 703:**

Limitation of Liability (article 29): AGC members indicated that the standard option would be to check the box that does not limit liability, unless the Constructor has the appropriate upstream provision in its prime agreement with the owner. The Constructor is likely to be responsible for direct damages that flow from damages, and therefore limiting the Supplier's liability would create a potential liability gap.

**WWEMA Comments for ConsensusDocs 703:**

WWEMA suggests the deletion of “or renders for Buyer any of the incidental services ordered.” Many times, the Seller will begin preliminary engineering while contract negotiations are taking place to help the Constructor meet its timetable with the Owner. The deleted clause, if left in, is likely to impede this cooperation.

Extent of Agreement (article 6): WWEMA users may want to take care to separate the cost of incidental services for tax consequences applicable to the project.

Force Majeure (article 10): WWEMA users should consider adding “and Price” after “extension of time” because this may be an appropriate remedy.

Inspection (article 13): WWEMA proposes to add at the beginning of the second to last sentence, “Except for final payment”.

Multiparty Proceedings (section 27.7): It is often not possible to have all vendors agree to this provision during the bid process. Owners and Buyers may wish to waive or modify this section in order to increase competition and receive the most favorable prices. WWEMA suggests that this section be modified so that the sentence begins, “Seller and Buyer will make best efforts to ensure that”.

Limitation of Liability (article 29): Suggests that users check the second box limiting contractual liability and add the following: “In no event shall Seller or Buyer's contractual liability exceed \_\_\_\_.” The parties should negotiate an appropriate contractual liability limit. The contract price as well as project circumstances should provide some instructive parameters to negotiate a fair amount.