

ConsensusDocs™
BUILDING A BETTER WAY

ConsensusDocs Guidebook

ConsensusDocs 751 – Short Form Agreement Between Contractor and Subcontractor

April 2017 Edition

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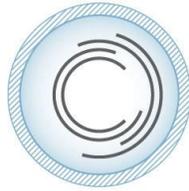
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Introduction to the ConsensusDocs Guidebook

ConsensusDocs is the product of leading construction associations, dedicated to identifying and utilizing best practices in the construction industry for standard construction contracts. The more

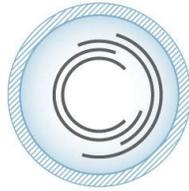


than 40 participating associations represent Design Professionals, Owners, Constructors, Subcontractors, and Sureties that literally spell the DOCS in ConsensusDocs. ConsensusDocs contracts and forms attempt to fairly and appropriately allocate risks to the Party in the position to manage and control 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.

This Guidebook you will find comments by individual associations regarding particular contract documents. These comments are organized by numeric sequence. Association comments are expressions by an association to its association membership only to highlight issues of particular interest.

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.



Comments regarding ConsensusDocs 751* **Short Form Agreement Between Contractor and Subcontractor**

Section 10.1: This Section does not condition the Subcontractor's payments on receipt of payments by the Constructor from the Owner. Progress payments to the Subcontractor are to be made within seven days after the Constructor receives payment from the Owner for the Subcontractor's Work. If, through no fault of the Subcontractor, the Owner does not pay the Constructor for the Subcontractor's Work, the Constructor assumes the liability "within a reasonable time". A "reasonable time" enables the Constructor to attempt to secure the payment from the Owner, what is "reasonable" for a particular project will depend on a variety of project-specific factors.

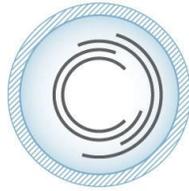
Section 10.5: Upon request, the Subcontractor has the right to receive from the Constructor information the Constructor obtained relative to the Owner's financial ability to pay for Constructor's work. The Constructor does not warrant the accuracy of the Owner's information.

Section 16: This section governs the Constructor's recourse when the Subcontractor fails to perform, including notice to cure. If the Constructor performs work under these provisions or subcontractors its performance, it has the right to change the cost thereof to the Subcontractor, who is liable for such payment including reasonable overhead, profit and attorney's fees.

Section 16.1: This Section provides that, in the event the Owner terminates the prime agreement, the Constructor, after providing written notification, may terminate the Subcontract.

* 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.

—From the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations



AGC Comments for ConsensusDocs 751:

AGC of America Comments can be found on AGC's contact documents members only [page](#)

NGWA Comments for ConsensusDocs 751:

Due to the unique nature of water well contracting, the following ConsensusDocs documents are recommended by the National Ground Water Association (NGWA - www.ngwa.org) to be used to assemble a water well contractor's ConsensusDocs contractual foundation: 202 (change order form from long form 200), 205, 220, 221 (Schedules A – C), 260, 261, 262, 706, 707, 710, 750, 751, 781, 782 and 795.

Additional NGWA Comments:

The following comments are limited to job sites involving borehole or loop drilling for geothermal (aka, ground source) heat pump system installations rather than for water well construction.

Safety (section 5): NGWA proposes:

“Debris shall not be construed to include drill cuttings, drilling fluids, drilling muds, or residual grout materials. Constructor shall provide for the subcontractor dumpsters or other appropriate waste disposal containers for the removal of debris other than drilling cuttings, drilling fluids, drilling muds, or residual grout materials.”

Warranties (section 6): NGWA proposes:

“The Subcontractor's warranties shall commence on the date of startup or the use of the geothermal system by the Constructor or the Owner. Startup and use of the system shall constitute Constructor or Owner acceptance of the system.”

Schedule (section 7.2): NGWA proposes:

“The Constructor shall insure that he provides suitable access to the designated area of which this Subcontractor shall perform his work and shall maintain the work area at all times.”