

Client Contracts Checklist

<input type="checkbox"/>	1. SCOPE OF SERVICES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Develop w/Client • Be specific and detailed • Involve project managers • Avoid words like "all", "comprehensive", "thorough", "complete" • List exclusions 	
<input type="checkbox"/>	2. STANDARD OF CARE	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Avoid words like "highest", "best" and "superior" • Measure against other design professionals • In similar locations • In similar situations 	
<input type="checkbox"/>	3. WARRANTIES, GUARANTEES, AND CERTIFICATION	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • No warranties, guarantees or certifications • Avoid lender certifications 	
<input type="checkbox"/>	4. JOB SITE SAFETY	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • No supervision of construction • No control over Contractor's means, methods, safety • No review/approval of Contractor's safety program 	
<input type="checkbox"/>	5. INDEMNITIES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Limit indemnified parties to the Client • No duty to provide an immediate defense • No responsibility for indemnified parties' wrongful acts • Work with legal counsel in drafting an alternative indemnity provision 	

<input type="checkbox"/>	6. ESTIMATES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Limit exposure for bid day busts including project delay costs • Contract with qualified construction cost consultant • Have Client provide cost estimates 	
<input type="checkbox"/>	7. CONSEQUENTIAL DAMAGES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Identify consequential damages provisions • Negotiate a mutual waiver 	
<input type="checkbox"/>	8. CODE COMPLIANCE	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Limit compliance to applicable design codes • Avoid language that requires “full” compliance with “all” codes • Language similar to the AIA’s position should be considered: <i>§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.</i> <p>AIA B 101 2007</p>	
<input type="checkbox"/>	9. DISPUTE RESOLUTION	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Use mediation as the prerequisite to litigation or arbitration • Hanover prefers litigation over arbitration • The dispute resolution process should be consistent for all contracting parties including the Client, Contractor and Subconsultants 	
<input type="checkbox"/>	10. INSPECTION	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Use observe, not inspect • Define the limits of observations • Document site visits promptly • Avoid words like “full compliance” • No warranties, guarantees or certifications 	

<input type="checkbox"/>	11. STOP WORK	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • No stop work authority • Okay to reject Work • Educate staff 	
<input type="checkbox"/>	12. LIMITED OR NO CONSTRUCTION PHASE SERVICES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Educate Client to the importance of construction phase services • Include contract language addressing Client's decision • Negotiate indemnity provision relating to design changes during construction • Document Client's decision in writing 	
<input type="checkbox"/>	13. OWNERSHIP OF DOCUMENTS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • PLAN A – No Client ownership of Documents • PLAN B - Grant the Client a limited license • Include indemnity for unauthorized reuse of Documents 	
<input type="checkbox"/>	14. HAZARDOUS MATERIAL	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Avoid contract responsibilities for the removal of hazardous materials. • Define what constitutes a hazardous material 	
<input type="checkbox"/>	15. PREVAILING PARTY ATTORNEY'S FEES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • NO • NO • NO 	
<input type="checkbox"/>	16. ASSIGNMENT	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Mutual consent for all assignments • No assignment without prior written approval 	

<input type="checkbox"/>	17. DESIGN SCHEDULE	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Provide design schedule • Include time for client approvals • Address the code approval process • Do not guarantee schedule performance • Provide for schedule adjustments for unforeseen conditions/delays beyond your control 	
<input type="checkbox"/>	18. LIQUIDATED DAMAGES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Strike liquated damages provisions • Include actual and reasonable damages • Limit liability to failure to comply with the applicable legal professional standard of care 	
<input type="checkbox"/>	19. LENDER PROVISIONS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • No warranties, guarantees or certifications • Reserve the right to say no • Attest to only things you know to be absolutely true and compliance with the applicable legal professional standard of care • Say no to warranting that completed construction will be/is in full compliance with design and code requirements 	
<input type="checkbox"/>	20. SITE EVALUATIONS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Limit to a visual evaluation of site/existing conditions • Exclude responsibility for hidden conditions • Avoid responsibility for verifying the vertical location of buried utilities 	
<input type="checkbox"/>	21. THIRD PARTY BENEFICIARIES	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Say no—protect your contract privity • Your services are solely for the Client’s benefit 	
<input type="checkbox"/>	22. LIMITATION OF LIABILITY	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Seek guidance of legal counsel • Enforcement varies from state to state • Language must be precise • Have the Client sign-off on/initial limitation of liability provision • Don’t extend limitation of liability to consultants 	

<input type="checkbox"/>	23. SUBMITTAL REVIEW	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Address Contractor's duty to review/coordinate submittals in their contracts • Review Contractor's submittal protocol • Require updated submittal schedule with each pay application • Avoid agreeing to a specified "turnaround" time 	
<input type="checkbox"/>	24. THIRD PARTY ACTION PARTY OVER PROVISIONS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Say no • Don't waive protection provided by applicable workers' compensation insurance laws 	
<input type="checkbox"/>	25. REQUESTS FOR INFORMATION	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Develop the request for information (RFI) form • Set forth detailed contractual requirements for processing RFIs • Control the review process • Provide for prioritizing the review of critical RFIs with the Owner and Contractor 	
<input type="checkbox"/>	26. ADDITIONAL INSURED STATUS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Require additional insured status on Contractor's comprehensive general liability, auto and umbrella policies • Be specifically named • Work with your insurance professionals to select the right additional insured endorsements 	
<input type="checkbox"/>	27. SUSTAINABLE DESIGN	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Do not warrant outcome • Advise that others including the Owner, Client and Contractor play a significant role in delivering sustainable projects • Address the risks associated with new, experimental and untested green products • Have the Client execute a waiver and consent acknowledging the risks of green products 	
<input type="checkbox"/>	28. STATUTES OF LIMITATION/REPOSE	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Understand how applicable law impacts your risks relating to the statutes of limitation/repose • Do not agree to extending the statutes of limitation/repose beyond the timelines required by applicable law 	

☐	29. FLOW-DOWN PROVISIONS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Common in the design/construction industry • Often incorporate uninsurable contract provisions • Always ask for and review incorporated documents • Establish that your agreement takes precedence over incorporated contracts/documents • Push back against incorporation of owner contractor agreements • Be wary of incorporated owner design-builder agreements 	
☐	30. INSURANCE REQUIREMENTS	NEGOTIATING POINTS
	<ul style="list-style-type: none"> • Review with insurance broker/agent • No additional insured status for Client on professional liability insurance • Professional liability insurance is claims made, NOT occurrence based 	



The Hanover Insurance Company
440 Lincoln Street, Worcester, MA 01653

hanover.com

Loss Control is the responsibility of your management. The recommendation(s) and contents of this material are provided for informational purposes only. This material does not purport to address every possible legal obligation, hazard, code violation, loss potential or exception to good practice. It should not be construed as indicating the existence or availability of any insurance coverage. Hanover Insurance Companies and their affiliates and subsidiaries specifically disclaim any warranty or representation that compliance with any advice contained herein will make any premises, property or operation safe or in compliance with any law or regulation.

©2017 The Hanover Insurance Group, Inc.