LegalSifter

ARCHITECTURE & ENGINEERING · PRE-SIGNATURE REVIEW

The Design Firm's Contract Checklist

What you are liable for

- ☐ **Standard of care** The ordinary skill and care of a competent professional under similar circumstances.
  Watch for: “Highest,” “best,” “free from defects,” or any warranty or guarantee of results.
- ☐ **Duty to defend** Each party funds its own defense; no duty to defend the client.
  Watch for: A standalone defense obligation that triggers on an allegation, before any finding of fault.
- ☐ **Indemnity** Limited to the extent of your own negligence.
  Watch for: Broad-form “arising out of or relating to,” and a long list of extra indemnified parties.
- ☐ **Limitation of liability** A cap tied to your fee or insurance, with a mutual waiver of consequential damages.
  Watch for: No cap at all, or carve-outs that quietly swallow the one you negotiated.
- ☐ **Certifications** A professional opinion, to the best of your knowledge, within your scope of work.
  Watch for: “Certify and guarantee/warrant,” or certifying beyond the work you performed.
- ☐ **Opinion of probable cost** An estimate based on professional judgment.
  Watch for: Language that treats the number as a guaranteed maximum or grounds to withhold fees.
- ☐ **Betterment** You pay only the added cost of correcting an error, not what the owner would have spent anyway.
  Watch for: Liability for the entire cost to fix, including the value the owner gains from the correction.

Getting paid and keeping your work

- ☐ **Payment** Defined due dates, interest on late payment, and a right to suspend for non-payment.
  Watch for: Pay-if-paid, broad withholding rights, and no interest on overdue amounts.
- ☐ **Instruments of service** You keep ownership; the client gets a license for this project on full payment.
  Watch for: Outright assignment, “work made for hire,” or unrestricted reuse on other projects.
- ☐ **Scope and additional services** A written way to authorize and price extra work before you perform it.
  Watch for: Open-ended “as directed” duties, or added services with no fee adjustment.
- ☐ **Time and liquidated damages** Perform with reasonable professional diligence.
  Watch for: “Time is of the essence” and liquidated damages, which a typical professional liability policy will not cover.
- ☐ **Suspension and termination** Payment for services through termination, including wind-down, and notice before convenience termination.
  Watch for: Termination for convenience with no pay for work in progress or demobilization.

Insurance and the long tail

- ☐ **Insurance limits** Professional liability at limits you carry, stated per claim and in the aggregate.
  Watch for: Required limits above your policy, or project-specific coverage you must buy.
- ☐ **Additional insured and subrogation** Additional-insured status on general liability and auto only.
  Watch for: Additional insured on your professional liability policy, or a waiver of subrogation on it.
- ☐ **Limitation period** Claims limited to the shorter of a set period from substantial completion or the statute.
  Watch for: An open-ended window that revives claims long after the project closed.
- ☐ **No individual liability** Recovery runs against the firm, not its principals or employees.
  Watch for: Personal guarantees, or claims against individual licensed professionals.
- ☐ **Site and hazardous conditions** Reliance on owner-supplied information; undisclosed conditions stay the owner's risk.
  Watch for: Accepting responsibility for pre-existing or hazardous conditions you did not create.
- ☐ **Dispute resolution and venue** Negotiation or mediation first, a defined governing law and forum, and each party bearing its own fees.
  Watch for: A distant mandatory forum, one-sided fee-shifting, or the client alone deciding fault.