



Construction Contract Checklist

Christopher G. Hill
The Law Office of Christopher G. Hill, PC
804.205.5155
chrisghill@constructionlawva.com

Principals of all levels of construction professionals from Contractors to Suppliers should review this checklist when presented with contracts by “upstream companies on a project.

Deal Breakers

- “Pay if Paid” Clauses
- One way attorney fee provisions in dispute resolution provisions
- Attempts to make you indemnify the entire project or insure the upstream party for its own acts
- “No damages for delay” clauses that remove your ability to claim actual damages for delay beyond your control and imposed by an upstream party
- Termination for convenience that only pays for work performed and materials installed as of the date of the termination
- Language that puts artificial limits on your ability to make a claim, including allowing the upstream party or its agent to be the judge of your claims validity
- **Waiver of bond or mechanic’s lien rights**

Items to Make You Think Carefully

- Mandatory Arbitration
- Clauses that mention the “satisfaction” of the upstream contractor or owner as the benchmark for correct work instead of the plans and specifications
- Clauses specifying the location for any lawsuit
- Final payment as waiver of all claims
- Statutes of limitations in the contract that impose artificial limits on your rights

Better to Avoid, but Don't lose a Good Deal

- Incorporating documents that are not plans and specifications, including the contract between the Owner and the General/Prime Contractor
- Bond requirements on non-government projects

A combination of your knowledge of and business history with the “upstream” party and these guidelines will help to assure that you get the best combination of protection and profit. Should any questions arise during the contract negotiations, consult with an [attorney](#) knowledgeable in construction law to assure that your rights are protected.

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.