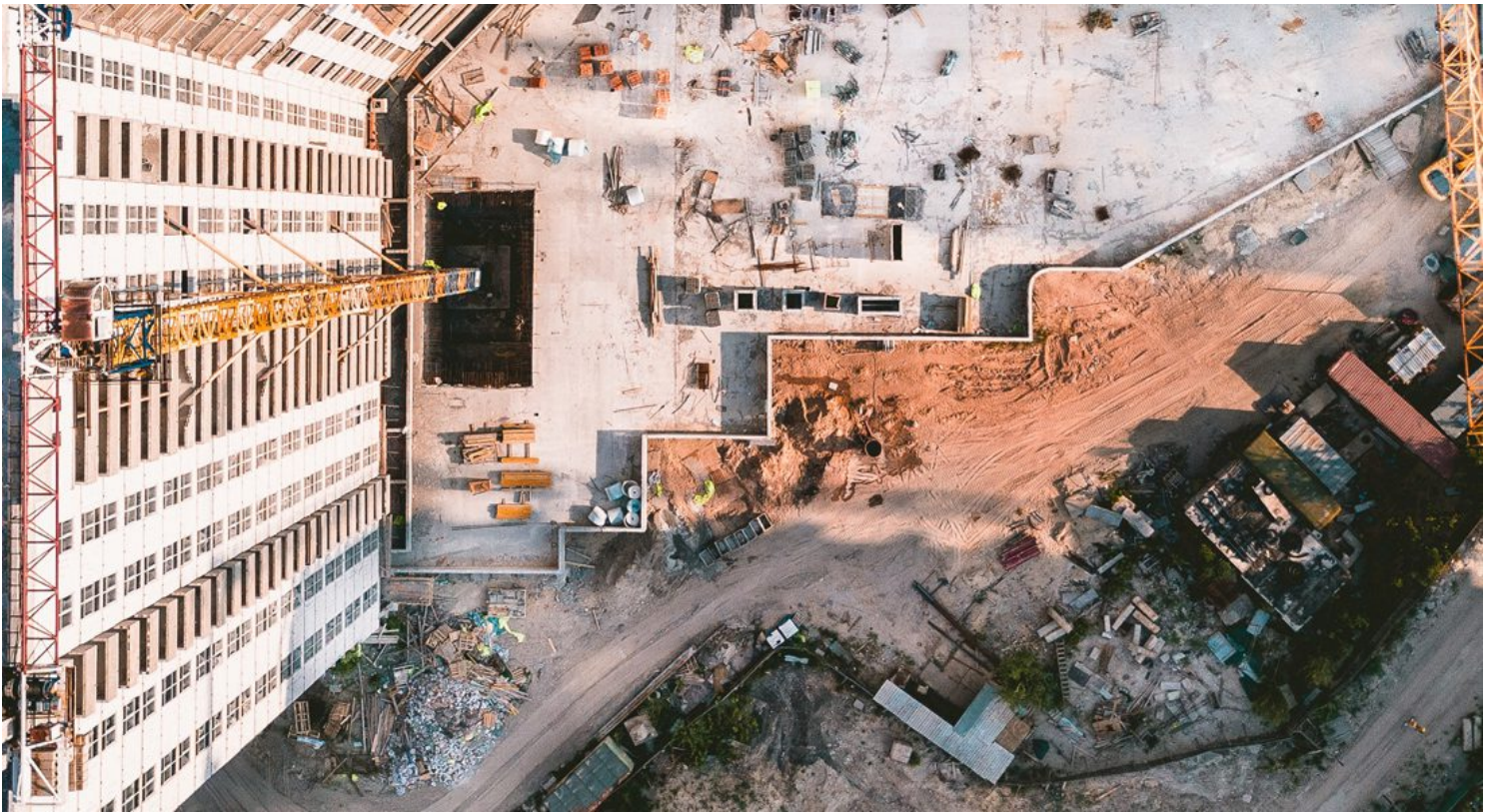


NEWS & INSIGHTS

Construction contracts - whether to use standard or custom forms

INSIGHTSARTICLE

NOVEMBER 10, 2020



A lot of contractors, subcontractors, developers, and design professionals often ask: Do I need my own custom contract forms, or is a standard form sufficient? As is often the case in the law—it depends. The typical standard forms (AIA, ConsensusDocs, AGC, EJCDC) are reliable forms that sufficiently cover most terms and issues. But it is often necessary to tailor the language to the needs of each project, add certain clauses, and care must be taken to ensure that the correct forms with the correct attachments are selected for each unique project.

Issues often arise when the parties select the wrong forms. If it's a design-build project, or construction management (agency/risk), then the correct contracts must be selected accordingly. Often a project has wrinkles;

for example, perhaps the design is split between the owner and contractor, in a version of delegated design, or preconstruction design assist. Or perhaps there are project-specific allowances, assumptions, qualifications, contingencies or alternates. For complex wrinkles, even selection of the correct forms will require further custom tailoring to address and properly articulate the agreement between the parties.

As previously noted, these standard forms cover most, but not all, issues. Typical standard forms will not account for state-specific mechanics' lien and waiver laws. Nor will they account for state-specific payment acts. Other areas of interest that might be modified to preference include the insurance, indemnity, change order, payment, retainage, termination, dispute procedure and schedule clauses. Contractors and subcontractors may also desire custom terms to address specialty trade issues such as safety, scope, pricing and risk allocation.

Other considerations should also be taken into account when deciding whether to use custom contracts. Master Contracts have become more popular of late, but they are not ideal for all situations. Master Contracts are boilerplate standard terms negotiated and agreed upon by the parties, and those boilerplate terms will cover all the different and separate jobs that the parties work on. The standard Master Contract terms do not address the particular specifics of any job/project. Instead, a work order for each specific job is issued that incorporates the lengthy Master Contract terms. Typical work orders are very brief and merely address scope, pricing and schedule for the specific job. Master Contracts are a good choice for standard negotiated terms when the parties have frequent transactions on several different jobs.

A last point of consideration is that standard forms should be reviewed, updated and revised from time-to-time. Best practice is to review and update standard templates every two years to account for changes in the law, business practices, troubleshooting and trends in the industry.

Seek legal counsel

Whether updating old forms or creating new custom forms, it is important to use trusted counsel and receive feedback from related professionals such as insurance brokers to assist with the language. It is an interactive process to ensure that the terms accurately state the points that align with your business interests.

Saxton & Stump attorneys [Ron Pollock](#) and [Matt Chabal](#) are available to discuss standard and custom contract forms and how our Construction Law Group can assist with contract reviews.

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