

KILLER CONTRACT CLAUSES

1. **Liability Considerations:**
 - Design Defects
 - Concealed Conditions
 - Schedule
 - Indemnity
 - Payment Terms

2. **Design Defects:**
 - Unless otherwise stated, Contractor takes responsibility for sufficiency of design
 - Limit liability by exclusions
 - No liability for sufficiency of design
 - Only responsible to call to attention of owner known design defects.

3. **Concealed Conditions:** Typical language says:
 - *Contractor has visited the site and assured itself that conditions are sufficient for construction; Waiver of responsibility for accuracy of owner supplied information*
 - This language makes Subcontractor generally responsible for concealed conditions. Changes you can make:
 - Only responsible for items actually noted as a result of visual observations
 - No independent testing required
 - Entitled to rely on owner supplied information
 - Assuming owner disclosed all known adverse conditions

4. **Schedule:**
 - Generally includes no damage for delay, extension of time is sole remedy for delay
 - Daily rate for liquidated damages
 - Need agreed upon schedule, with input from major subcontractors
 - Need copies of schedules
 - Need compensation for material or unreasonable schedule changes
 - Need corresponding agreed to rate for contractor's daily overhead

5. **Schedule:**
 - If the schedule shows your work stacked with everyone else, you will have a hard time recovering the inevitable productivity losses. If the schedule requires you to have 30 men on a floor because the duration was insufficient, you'll have a hard time recovering productivity losses. And worse, if you don't provide the 30 men on that floor, you will be subject to damages from the CM and the other trades
 - Owners & CMs use the schedule to assess damages, including LDs. Owners are using LDs to:
 - Provide additional savings (backend VE)
 - To offset costs for changes to the work or extend overhead claims

- To accelerate the completion of the project
- Need agreed upon schedule, with input from major subcontractors

6. **Scheduling Must Do's:**

- Submit your own schedule to the CM early on. Many subcontracts require it:
- This allows you to establish sequences and durations more favorable to you, it informs the CM what he needs to get done for you, and when, and you also inform the CM of your interpretation of the Contract Time
- Update your schedule periodically to ensure you are fulfilling your contract requirements to the extent possible
- After the project has started, request an electronic copy of the CM's schedule

7. **Insurance:**

- Review this with your broker prior to bid - Know what you are buying, "Unmodified ISO CG 00 01 07 98 or its equivalent"
- Need to be wary of OCIP's.
 - Limitations on cross-claims
 - Who's responsible for deductibles?
 - Little or no control of claim administration
- Need copies of insurance policies, not certificates

8. **Indemnity:**

- Try to limit to what you cause if not, then try to cap to insurance or value of contract
- Look out for indemnity of Owners/Lenders/Architects/Others

9. **Others:**

- Contingent Payment Clause
- Change Order/written directive provisions
- Dispute Resolution
- Default/Termination