

TERMS AND CONDITIONS

1. The Owner hereby represents that he is the Owner in fee of the premises whereon the improvements herein specified are to be made, having a deed for the same. Owner, on request, shall furnish all surveys describing the physical characteristics, legal limitations, and utility locations for the site of the Project.
2. The Contractor agrees to use his best efforts to complete the Work promptly. He cannot be held responsible for delays due to strikes, fires, acts of god, unworkable weather conditions, or otherwise inability to meet the anticipated schedule. Should the Contractor not be so excused, then the Owner hereby agrees to receive as liquidated damages, \$_____per calendar day, as full compensation.
3. The Owner, without invalidating the Contract, may order extra Work (within the general scope of the Contract) or make changes by altering, adding to or deducting from the work. All such changes shall be in writing and executed by both parties. The Contract sum shall be altered accordingly. All such Work shall be executed under the conditions of the original Contract. The value of any such changes shall be determined in one or more of the following ways: A.) By estimate and acceptance of a specified amount. B.) Unit prices named in the Contract or subsequently agreed upon. C.) By actual cost plus _____ percent. If none of these methods are specified by the Change Order, the third method shall apply.
4. The Owner shall notify the Contractor of any complaints he has about the completion of this Contract within ten days after conclusion of Work by the Contractor and submittal by the Contractor of a notice of conclusion of the Work and absent such notification, the Work shall be deemed to have been completed in a satisfactory manner. Furthermore, the Owner must notify the Contractor within two (2) days of learning of any problems before any progress or final payment is withheld or reduced in value.
5. If tests (other than those that may have been made in initial design) shall be deemed necessary (by the Engineer or Architect or Owner) to establish bearing capacities, such tests and reports as required shall be paid for by the Owner.
6. It is expressly understood and agreed that the Contractor shall be entitled to liquidated damages in the amount of 25% of the Contract price in the event this Contract is terminated before the Work begins and without the consent of the Contractor. Should the Work have already begun, then the Contractor shall be due all costs incurred plus 25% of the Contract price.
7. Progress payments or final payment due and unpaid under this Contract shall bear interest from the date payment is due at the maximum rate allowed. Such rate to be that rate used for revolving credit at the locale of the Work.
8. Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof, to protect its interest in any matter arising under this Contract, or to collect damages for the breach of the Contract or to recover on a surety bond given by a party under this Contract, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and expenses expended or incurred therein.
9. It is expressly agreed between the parties that in the unlikely event of a dispute of any nature relating to this Contract arising between them, that it will be submitted to the American Arbitration Association for binding arbitration, under the Construction Industry Rules.
10. **WARRANTIES:** The Contractor shall issue limited warranties for materials, products, and other related Work for differing periods of time depending upon the specific material, product, or Work, which shall be issued upon completion and payment for the Work specified herein upon request of the Owner and in conformance with the terms, conditions, and guarantee policies of the Contractor. **THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS, IMPLIED, OR STATUTORY AND CONTRACTOR NEITHER ASSUMES, NOR AUTHORIZES, ANY PERSON TO ASSUME FOR IT ANY OTHER OBLIGATION OR LIABILITY IN CONNECTION WITH THE WORK TO BE PERFORMED UNDER THE TERMS OF THIS CONTRACT.**
11. Contractor's scope of work shall not include the identification, detection, abatement, encapsulation or removal of asbestos or any other hazardous substances.
12. Permits, licenses, fees, tests, inspections, or surveillances of any type which may be imposed under the building or zoning ordinances or by Cities, Counties, States, or other regulatory authorities are to be obtained by and paid by Owner and are not included in the Contract unless so stated.
13. All promises, understandings, or Contracts of any kind, to this Contract, not mentioned herein, are hereby expressly waived; and it is agreed that this instrument shall constitute the entire Contract between the parties, and shall not be modified in any manner, except in writing signed by both parties.

FIGURE 9.3 (Continued)

One way to ensure a level playing field is to require all the manufacturers to submit with their bids letters of design certification. A letter of this kind should clearly state the builder's name, building configuration, governing codes and standards to be followed, and every load and load combination the building will be designed for. The letter should bear a seal and signature of a registered engineer employed by the manufacturer.

Another critical item to be checked in the letter is the design roof snow or live load, a common target of manipulation by some manufacturers seeking an advantage over the competition. (More on this subject in the next chapter.) Insist on seeing the actual design roof load, not the "ground snow load," which is only a starting point for further calculations. If roof live load, not snow, controls the design, the letter should indicate the actual loading used to design various members and any live load reductions taken by the manufacturer.

Also, design wind and seismic loads and, especially, collateral loads should be clearly stated in the letter. Verify that proper lateral drift and vertical deflection criteria will be used: A manufacturer who "overlooks" these will have a major cost advantage over the others. If too little—or too vague—information is provided in the letter, do not hesitate to ask for a written clarification of any murky issues.

A sample letter of design certification is reproduced in Fig. 9.4 from Ref. 2. Note that the letter identifies the specific edition dates for the governing standards and codes, a fact especially important for the AISI Specification, as explained in Chap. 5. This and other items most commonly lacking in clarity in design certification letters are highlighted in boldface.

To help ensure quality of both design and fabrication for a critical project, the owner may elect to deal only with the manufacturers whose facilities have passed AISC Quality Certification program, Category MB. While it is true that there are plenty of capable manufacturers that are not so certified, limiting the pool of bidders to those with the designation greatly simplifies the comparison.

Carefully compare the warranties. Will the warranty called for by the contract documents be provided? A standard warranty for framing components is 1 year from the shipment date. Warranties for metal roofing are available up to 20 years and depend on the material.

Check the builder's qualifications, too. Since it is the builder who signs the contract with the owner, this check is at least as important as comparing the manufacturers. Have the builders worked on similar projects? Do their references confirm their ability to deliver on time and within budget? Are they satisfied with the quality of their work? Are they financially stable and bonded? (Who hasn't heard about a contractor going belly-up in the middle of a job?) Are they members of the Metal Building Contractors & Erectors Association? Are they certified by the manufacturer? Investigate how the builder tends to approach any out-of-scope items. Are the "extras" priced reasonably or become a source of enrichment?

Find out if the builder (or the president in a large construction company) is personally involved with the projects: The best builders are. For example, the president of Span Construction and Engineering, the *Metal Construction News*' "1994 Top Metal Builder," personally inspects every major metal roof completed by the company, investing up to 1/2 day in each such "walk." In his words, such inspection lends credibility to the 20-year weathertight warranty.³

The selection process ends with signing of the contract documents by the owner and the builder. The contract documents may include the agreement, general and supplementary conditions, drawings, and specifications. The contract should assign a clear responsibility for various facets of design, fabrication, erection, code compliance, and permitting. Except for very small and simple buildings, we recommend that the AIA contract forms be used, rather than a one-sheet proposal and contract form similar to that of Fig. 9.3. (Incidentally, the MBCEA contract requires owners to pay a penalty equal to 25 percent of the contract price if they fail to proceed with the work after signing the contract.) The contract may reference MBMA *Common Industry Practices* to establish a scope of work.

Some contract provisions may lead to protracted negotiations. If discussions over a truly important provision are deadlocked, dealing with the lowest bidder might be abandoned, if permitted by law, and the no. 2 bidder invited to negotiate. In this tense situation, some owners in their zeal to build may rely on verbal promises instead of ironed-out written agreements, forgetting the Samuel Goldwyn quip about an oral contract not being worth the paper it is written on.

The manufacturers might be more open to negotiations if contacted during their slowest months of the year—November and December.