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## On the Language of the General Conditions of the Contract



If RMW does not provide the General Conditions of the Contract, **ALWAYS** require a copy from the Owner.

- The General Conditions:
  - **Have to be coordinated with the Specifications and the Drawing Notes.**
  - **Are linked directly to the Agreement between the Architect and the Owner because the General Conditions describe the Architect's and the Contractor's rights and obligations during contract administration.**
  - **Always review the Owner's General Conditions with the Project team and our insurance lawyers, and if necessary, with our corporate lawyer.**

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## Example of a TOTALLY Unacceptable Clause

### *Discrepancies and Omissions:*

- A. *Any discrepancies or omissions found in the Contract Documents shall be reported to the Construction Manager immediately. The Construction Manager will clarify discrepancies or omissions, in writing, within a reasonable time.*
- B. *In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:*
1. *Contract*
    - b. *Agreement*
    - c. *Permits*
    - d. *Change Orders*
  5. *General Requirements – Section 01010*
  6. *Supplementary Conditions – Section 00800*
  7. *Instructions to Bidders – Section 00100*
  8. *General Conditions – Section 00700*
  9. *Technical Specifications*
  10. *Project Plans*
  11. *Reference Specifications*
  12. *Reference Standard Plans*

- C. *With reference to the Project Plans, the order of precedence is as follows:*
1. *Figures govern over scaled dimensions.*
  2. *Detail drawings govern over general drawings.*
  3. *Addenda/Change Order drawings govern over standard drawings.*
  4. *Contract drawings govern over standard drawings.*
  5. *Large-scale drawings govern over small-scale drawings.*



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## So Why is it a TOTALLY Unacceptable Clause?

### yes, WHY?

- The Architect and its consultants **are the only ones allowed by law to change or modify the construction drawings and specifications** (which we stamp and sign), therefore any clarification — and especially any modification — **has to come from the architect or its consultants.**
- The drawings and specifications record the architect's design intent, so only the architect, as the author, should make a determination as to what the design intent is.
- Clauses similar to the example enclosed not only take away from the architect the interpretation and possible modification of the documents and give it to the contractor or to another entity, but they tell the contractor how to interpret the documents.
- The terms used in the sample clause are not the ones used in the documents issued with our projects, neither are they standard in the industry (or make any sense).

### Careful!

- This “unacceptable clause” was included in the General Conditions for the Contract for Construction sent to us by the CM of one of our projects for incorporation into our documents; we reviewed this document with our lawyers, caught the clause, and we negotiated a change to it: that is why **we need to read all the documents given to us either by the Owner or anyone else for incorporation into our documents.**
- Always ask the Owner or the CM to send the documents they want to include in the contract with anticipation for our review, so that there is time for negotiating any changes.



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## Example of an Acceptable Clause

### Use this Alternative Language when needed:

- The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

*The AIA B201 2007, paragraphs 2.6.2.3 and 2.2.2.4*

### Sources for Alternative Language:

The best source for alternative language are the AIA DOCUMENTS. You can download free samples from this site: <https://www.aiacontracts.org/>. Other sources for alternative language are the RMW contract forms (in Rspace), and the RMW contracts used successfully in former projects.

