

**Example Favorable / Unfavorable Contract Wording / Design Build Project  
Contractual Risk Management - A Potential Hot Potato - RIMS 2008**

Ranked in Order of Usual Importance				
No	Subject	Favorable	Unfavorable	"Never Do"
1	"Aggregate" limitation of liability (damages cap - all theories of liability)	Limit to insurance required or contract amount	Unreasonable amount - example 10X contract value	No cap or disproportionately high cap
2	Consequential Damages	Excused from all consequential damages	Not excused to the extent of our negligence or insurance coverage	No waiver of consequential damages
3	Performance Guarantees	No performance guarantees	Clearly defined performance guarantee including parameters, conditions to be met by customer, performance test criteria, remedy and identifiable start / end dates	Any guarantee that is not reasonable or clearly defined
4	Standard of Care (Design or Design / Build)	Negligence Based Standard	Performance based standard (clearly defined terms and conditions)	Performance based warranty unreasonable or unclear
5	Indemnity	Limited - we indemnify only to the extent of our negligence	Intermediate - we also indemnify for indemnitee's joint / contributory negligence	Broad - we indemnify for indemnitee's sole / exclusive negligence
6	Force majeure	We are excused from performance - no exceptions	Excused unless due to our negligence or covered by required insurance	No force majeure clause
7	Pre-Existing Environmental Conditions	No responsibility other than to notify owner	Responsibility to extent conditions exacerbated by us	Assume unlimited exposure
8	Unanticipated or Differing Site Conditions	No responsibility other than to notify owner	Responsibility to extent conditions exacerbated by us	Responsibility for conditions regardless of cause or our negligence
9	Waiver of Subrogation	No waiver of subrogation	Waive only claims covered by our insurance program	Waive subrogation on professional liability or waive subrogation without regard to insurance coverage
10	Insurance Requirements	Limits required < \$10M	Limits Required > \$50M	Unlimited or > \$100M
11	Warranties	Standard 1 year repair, replace, reimburse (if defects)	Implied warranties not excluded, or warranty terms not clearly defined	Open ended / unreasonable warranty