

Five Quick Tips for Construction Purchase Orders

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Most contractors and subcontractors use a standard purchase order - or P.O. - form for their limited-scope projects. Attorneys often recommend supplementing the P.O. by attaching a form of general terms and conditions. Although general terms and conditions are designed to incorporate broad legal provisions that protect a contractor's or subcontractor's rights during a project, they can be time-consuming to prepare. Consider these five tips for quickly supplementing your P.O. forms in situations where general terms and conditions are unavailable:

Reference the Project Scope and Supporting Documentation. The P.O. form should have a clear description of the project and list the drawings and specifications that apply to the project. This includes the title, sheet number and dates of all drawings. The P.O. should also state which project documents take precedence in the event of a conflict. If there is special sequencing as to when plans will be prepared based on the initial proposal or budget, describe this. Finally, if there was work performed before the P.O. was signed, make sure to describe the work previously completed and state that the P.O. applies retroactively to this work.

Include Detailed Payment Terms. How are invoices being paid? The P.O. form should clearly state how long until an invoice is overdue, as well as the interest or penalties incurred if the invoice is not paid on time. If there is no retainage involved in the project, the P.O. form should state that explicitly. List unit prices and alternates if they are applicable.

Include Detailed Contract Timing Terms and Waive Consequential Damages. Clearly state the commencement date and substantial completion date for the project. Add a clause that permits delays for force majeure (or acts of God) events, such as reasonable weather delays, strikes, fires, riots and other uncontrollable situations. This clause should also specify that delays due to COVID-19 may also push back the substantial completion date. Finally, include a sentence stating that both parties waive their rights to seek consequential damages from one another to prevent claims for lost profits and other damages due to any delay in completion.

Include Insurance Provisions. The owner and contractor usually have an unspoken understanding to carry insurance, but it is still best to spell out the minimum limits of each carried insurance policy including who, if anyone, should be named as additional insured. Contractors should consider stating in the P.O. form who is carrying the builder's risk insurance, or include a line item for the policy premium if the contractor is obtaining it. Add another sentence to the P.O. that requires both parties' insurance policies to contain a waiver of

subrogation clause. A waiver of subrogation means that one party's insurance company will pursue damages from the other negligent party for claims that are covered and paid under the original policy as long as the insured is waiving its right to pursue damages from that negligent party. This is helpful to have because it avoids the possibility of dispute down the road as to claim coverage. However, it is important before agreeing to such a provision to confirm that your insurance policy allows such waiver of subrogation or that it has a waiver of subrogation endorsement.

Add the Ability for PDF Signatures and Date the Signatures. Both parties should sign the P.O., rather than just the party generating it. It should have a sentence that specifies that the parties may sign the P.O. electronically and in separate counterparts. When a P.O. does not have this type of provision, it invites courts to analyze whether the owner properly signed the P.O. and raises questions about what constitutes a "signature." When you add this provision, there is less room for interpretation about the validity of a signature during a dispute. Also, date each signature so that there is no question about when both parties signed the P.O.

A P.O. form is a valid tool to help keep the construction process moving. Make sure to consider these five points when preparing your P.O. to help make your P.O. a more comprehensive contract, especially in the event of a dispute. If you have any questions about the legalities surround purchase orders, please [contact me](#) or anyone in the [Barley Snyder Real Estate Practice Group](#).

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Reilly S. Noetzel

Associate

Tel: (717) 399-1561

Email: rnoetzel@barley.com