<table>
<thead>
<tr>
<th>Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amounts in excess of the agreed upon price that the contractor attempts to collect from owner, customer or others due to errors, delays, unforeseen costs</td>
</tr>
<tr>
<td>If written notice is given but the other party refuses to issue a change order then a claim can arise If an agreement is reached, then the issue becomes a change order or extra instead of a claim</td>
</tr>
<tr>
<td>Contractor is normally not entitled to profit on the claim cost unless it’s gov’t work</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Variations/Changes clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>in contracts which recognizes that changes are inevitable claim has to be based on the contract terms and not on what’s equitable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implied Contract conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Owner</td>
</tr>
<tr>
<td>cooperate, not interfere, drawings and specs are complete, supervise and coordinate other workers on the job, materials that owner is responsible for are delivered timely good quality workmanship and materials</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Delay Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost and Time are the basic components</td>
</tr>
<tr>
<td>Completion date has been affected</td>
</tr>
<tr>
<td>No damage for delay clause</td>
</tr>
<tr>
<td>Hold Harmless clause</td>
</tr>
<tr>
<td>Contractor may be entitled to time but no compensation for these two clauses</td>
</tr>
<tr>
<td>These clauses should only apply to areas that the contractor can control</td>
</tr>
<tr>
<td>Excusable Delay (Force Majeure)</td>
</tr>
<tr>
<td>Time but no money, time extension is important if LD’s are involved Strikes, labor disputes, unusual weather, acts of God</td>
</tr>
<tr>
<td>Compensable Delay</td>
</tr>
<tr>
<td>Time and money, owner, architect or engineer caused delays differing site conditions, owner interference, late delivery of materials or drawings, numerous changes to contract, lack of access or right of way.</td>
</tr>
<tr>
<td>Nonexcusable, noncompensable</td>
</tr>
<tr>
<td>no time or money, caused by the contractor, poor productivity, bad scheduling, equipment failures, mistakes, poor supervision</td>
</tr>
<tr>
<td>Concurrent Delay</td>
</tr>
<tr>
<td>Two delays that occur at once attributable to both the contractor and the owner and maybe other parties damages are apportioned among the parties</td>
</tr>
<tr>
<td>Time-In-Kind</td>
</tr>
<tr>
<td>Extension of time. Ex: if job was supposed to be built in spring but owner delayed till winter get extra time due to maintain an equivalent amount of time</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost is the basic component</td>
</tr>
<tr>
<td>Planned schedule has been altered resulting in lost efficiency and add costs</td>
</tr>
<tr>
<td>Completion date is not necessarily affected</td>
</tr>
<tr>
<td>Caused by the owner, engineer, architect that prevent the contractor from performing according to the planned schedule. Change in conditions than were not anticipated during bid resulting in loss of efficiency Major revisions of plans/specs, numerous project changes, interference by owner or other contractors (stacking of trades), failure of owner supplied mats to arrive on time or in the appropriate sequence</td>
</tr>
<tr>
<td>Disruption claim can lead to a delay claim and an acceleration claim if owner wants original completion date</td>
</tr>
<tr>
<td>Contractor not entitled to time if schedule is based on unreasonable assumptions or on a poor plan</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acceleration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directed Acceleration</td>
</tr>
<tr>
<td>If owner requests completion date be the same or earlier even if there's been a delay</td>
</tr>
<tr>
<td>Constructive Acceleration</td>
</tr>
<tr>
<td>If owner does not grant enough time for a compensable or excusable delay, then contractor can assert a constructive acceleration claim</td>
</tr>
<tr>
<td>If contractor accelerates on their own to get a bonus, then no acceleration claim</td>
</tr>
</tbody>
</table>
Changed conditions
Differing site conditions clause
Changed conditions clause

Scope Changes
Most common type of change

Termination
For Convenience
For Default

Claim costs
Total cost approach-comparing actual costs to bid
Job cost-difference is claim cost
Actual cost approach-actual costs or estimates
for claim costs
Can be recognized if recovery is probable
and estimable
Lmt to the lesser of amount of the claim
or costs incurred regarding the claim

Disclosure
2 methods
Claims are not recognizable until claims are received
Claims are recognizable when recovery is
probable and estimable

If data furnished by the owner is different than actual conditions or if the constructed project is substantially different than the planned project due to change orders, some owners try to employ contract language disallowing this claim recovery depends on how diff. The conditions are, did contractor notify owner, did owner have superior knowledge of the difference, could contractor have mitigated it

usually settled via CO, disagreement is usually re cost of the scope change
undetected design error, owner value engineering due to financial constraints,
must be limited to the ORIGINAL scope of project to avoid breach of contract which would allow contractor to terminate performance, a cardinal change is when the changes are so extensive that the nature of the contract is changed which allows contractor to terminate the contract without penalty

either contractor or owner can initiate. Doesn't terminate the contract, just the other party's performance in it
convenience-project is no longer needed, environmental problems
default-contractor or owner has failed to perform, cardinal change may have occurred, difficult to resolve, litigation almost always default or convenience-owner doesn't have the funding

Labor and equipment productivity losses are the most difficult to quantify and must be estimated
must be a legal basis for it, caused by unforeseen circumstances, identifiable and determinable

claim evidence must be objective and verifiable

legal opinion is important

unforeseen circumstances: customer caused delays, scope changes or errors in design and specs, changed conditions, terminations, directed or constructive acceleration, interference or disruption
claims costs should only include valid project costs and should not include legal and claims prep costs, g&a costs, or interest costs

apply disclosures consistently, any change is a change in accounting,
disclose amount of claims recognized in the fin, disclose gain contingency amounts for claims not recognized in the fin
dr, cr, contract revenues or defer costs on the b/s and reduce costs of construction, dr defer costs and cr cost of construction


Legal

Contract Types
Fixed Price
Cost plus Fee
Cost plus Fee with GMP
Unit Price
Time and Materials

Contract Documents
Contract
General Conditions-AIA 201
Plans & Specifications
Drawings

Remedy Clauses-2 types
(1) Compensation for extra work
   (a) Increased scope
   (b) Differing site conditions
(2) Limits/prohibits normal legal remedies
Notice Provisions

Scheduling Provisions
(1) Liquidated Damages
(2) No damage for delay
(3) Notice

Excusatory Provisions

Indemnification Provisions

Contract Interpretation
(1) Course of performance
(2) Course of dealing
(3) Usage of trade

single price for the amount of work, most risky to contractor
reimbursement of allowable costs plus a fee, low risk to contractor
once a cost type contract hits a GMP, it effectively becomes a fixed price contract
single price per unit, risk of unbalanced units, if productivity goes down then less profit per unit and vice versa
similar to cost plus, based on direct labor hours at fixed hourly rates plus materials costs

Article 9-dispute resolution, Article 10 termination/suspension

owner warrants the fitness of the plans & specs. 2 exceptions (1) patent defects-if it’s obvious that performance would be impossible, the contractor has to tell the owner at the bidding stage
(2) contractor has assumed the risk for the design (performance specs-contractor determines the method and design specs-contractor follows architect’s design)

remedies available if another’s actions causes additional cost or damages
there are usually limits on recovering OH and profit
different from plans and specs
Worksite conditions are not as anticipated-contractor is entitled to an adjustment
ex: requiring arbitration and time period limitations
require written notice be given before work is performed

assessed if time requirements are not met
if the project starts later than planned, the contract completion dates should be renegotiated
required to give the owner timely notice of any delay

excuse the owner and architect for increased costs, even from their acts and omissions
inspection, familiarity with work, no damage for delay-gives owners unfair adv

hold the owner and architect harmless from 3rd party claims such as property damage and personal injury
shift the risk to the contractor, can obtain insurance rider to Bldrs Risk or Genl Liab ins

In the order of priority-c of perf: interpretation of contract before a controversy arises
course of dealing: how the same parties handled the issue in the past
how a particular trade or industry usually deals with the issue
Dispute Resolution
best to resolve the dispute in the field, if possible
architect is the initial judge of disputes
if a co is in dispute, the owner must pay the contractor at least the amount that the architect certifies
as the value of the work
if no disputes clause in the contract, contractor may still sue for breach of contract

Payment Terms
Determined by contract and SOV
Failure to make payment without a good reason is a material breach per AIA 201 Article 5.4.1

Subcontracts
Governed by the General Contract
Pay when Paid Clause
must be consistent with prime contract re disputes, if owner terminates GC, sub is assigned to owner
sub is paid when owner pays gc

Warranties
Express Warranty
in writing-included in the contract or actions or words by the parties
under the UCC, which applies to the sale of materials and equipment, express warranties cannot be disclaimed by "as is" wording

Implied Warranty
Warranty of Fitness
inferred and imposed as a matter of law, do not arise from negotiations or from contract terms
fit for a PARTICULAR purpose, seller knows that buyer needs it for a particular purpose, like shoes will be for hiking
buyer is relying on the seller's knowledge, NA if the buyer does not rely on the seller's knowledge, "cover" right to purchase substitute goods
applies to all sellers, UCC allows implied warranties to be excluded by using "as is"

Warranty of Merchantability
goods will be salable if the seller is a merchant of the same kind of goods
fit for ORDINARY purpose, usually bulk items like bricks, paint, easier to prove than warr of fitness
applies only to sellers who are merchants

Owner's Warranty of Specifications
owner implies that plans and specs are accurate and suitable for project
3 exceptions: if contractor knew of defect when s' contract, if proceeds anyway, or fails to follow plans & specs

Gov't Contracts
Miller Act
Subs, suppliers and materialmen can recover on the pm't bond. Lien does not attach to the property but to the govt's funds
Bonds are usually required

Sovereign Immunity
gov't can't be sued unless it consents to be sued

Proprietary Act
If for public health and safety, the gov't let water escape from a dam which delayed work on another gov't project, gov't is not responsible for damages
but if gov't let water escape on the dam to help another project and repair work was delayed on the dam, compensable delay

Impaired warranty of specifications
most important implied obligation of the gov't

Impaired warranty of good faith and fair dealing

Impaired duty to not hinder or delay

Gov't Clauses
Performance requirements
Material and workmanship be new, skillful and acceptable, inspection and acceptance by gov't
conditions affecting the work-contractor's responsible for determining the conditions that can affect the work
gov't can use and possess the work prior to completion, warranty of construction-work conforms to specs and no defects
generally monthly pm'ts and may retain 10%
adjustment-change orders
Davis Bacon act, affirmative action
Suspension of work-gov't can suspend, delay or interrupt work for its own convenience
written
<table>
<thead>
<tr>
<th>Alternative Dispute Resolution (ADR)</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Negotiation</td>
<td>preserve relationship, low costs, fast results, usually results in lower claim recoveries</td>
</tr>
<tr>
<td>Mediation</td>
<td>Nonbinding efforts of an impartial person or team, not interested in making a judgement, instead try to encourage a compromise</td>
</tr>
<tr>
<td>Arbitration</td>
<td>A legally binding, less formal alternative to litigation. May be less costly and faster than litigation but not always</td>
</tr>
<tr>
<td>Mini Trial</td>
<td>A shortened proceeding in the presence of both CFO's and their attorneys, reason will prevail and settlement</td>
</tr>
<tr>
<td>Litigation</td>
<td>Court of Law, unpredictable results</td>
</tr>
<tr>
<td>Dispute Resolution Board</td>
<td>Group of people, such as Engineer, Architect, Contractor and Owner, that would resolve the dispute between two subs, for example. No external people are involved.</td>
</tr>
</tbody>
</table>