



# Right-Sizing Risk: Learn to Recognize Common Onerous Contract Clauses

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**Contractors should have a clear understanding** of their contract terms and the risk they are taking on when they sign them. There should be no doubt about what the performance and payment surety bonds will cover and what the contractor will be responsible for if there are delays or defaults.

The first and most important thing contractors can and should do to protect themselves from onerous contract clauses is to read the contract. I can't stress this enough because we have seen many disputes that could have been avoided if the contractor had read and understood the contract.

There are many ways for contract language to assign a disproportionate

amount of risk to the contractor. Knowing some of the common types will help you watch out for these dangerous clauses. For instance, the word "any" (e.g., any breach of the contract) is one such example. By saying "any" contract breach, project owners might try to claim that the surety bond permits them to make demands for insignificant deviations from the contract requirements.

Among the most common onerous contract clauses are damages, indemnification, warranty, differing site conditions, venue and jurisdiction provisions, attorney's fees provisions and statute of limitations waivers. It's important to review these contract

clauses carefully; and remember, a contractor's risk should be limited to the extent of its negligence.

In all cases, the surety wants contractors to be successful, and that starts well ahead of the ground breaking. The goal of the surety on the contractor's behalf is to only take on the risks the contractor is truly responsible for while limiting the rest. It is to the advantage of the contractor, the project owner and the surety to see work completed successfully and subcontractors and vendors paid appropriately. Sureties will be on the lookout for bond language that might limit their options when settling claims and rescuing endangered projects. ♦