

# TACKLING ON TERMS: IMPLIED WARRANTIES AS PART OF THE CONSTRUCTION CONTRACT

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**O**ftentimes we assume that our contract spells-out our entire agreement. Seldom do we consider that terms not written-down may just as swiftly form a part of the contract.

Construction contracts are standard for governing the relationships between owner and general contractor, and are often detailed. That is not to say, however, that implied warranties are unusual.

Construction agreements carry with them a unique set of implied warranties that supplement not-otherwise-inconsistent contracts. The primary warranties include accuracy of plans and specifications, availability, and not to hinder and delay.

The implied warranty of accuracy of plans and specifications, also called the Spearin doctrine, recognizes that a contractor is bound to build the project according to the plans and specifications provided by the owner. The owner therefore warrants that if he builds according to the plans, the contractor will not be responsible for defects. In addition, if extra work is required to remedy defects in the plans, the contractor

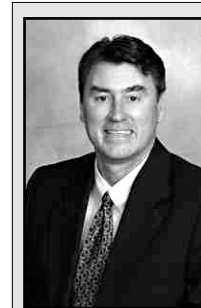
will be compensated; if the contractor's progress is delayed, he is entitled to compensation for the delay. This implied warranty is not overcome by the normal contract provisions requiring the contractor to visit the site, review plans and specifications, or inform himself of the work.

The plans and specifications provided to the contractor may also contain directives as to materials to be used. Where material specified by the owner is only available from one source—the "single source rule"—the owner warrants that the material is available. The owner does not warrant, however, that the supplier will sell the materials at any given price or provide materials in a timely manner. Where a specified material is not commercially available, the contractor will be relieved of the duty to supply it.

Finally, every construction contract carries with it an implied warranty that the owner will not unreasonably hinder or delay construction. This requires not only that the owner not hinder the contractor, but that he

must also provide the contractor with reasonable information not available elsewhere. If the owner violates this implied warranty, he will be responsible to the contractor for any resultant costs incurred.

Although these warranties are often overlooked at the time of contract, the parties should be aware that they are not unavoidable. Unlike some implied warranties, these may be altered or obviated altogether by an express written agreement to the contrary. The parties may choose to shift the risk of these warranties to the contractor, and courts have generally upheld those contractual provisions.



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