



---

# GENERAL CONTRACTOR'S PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

---

**Document No. 640**

First Edition, 2015

© Design-Build Institute of America

Washington, D.C.



## Design-Build Institute of America – Contract Documents LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America (“DBIA”) provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased, or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA’s copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification, or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA’s entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA’s “Limited Warranty” which is returned to DBIA with a copy of your receipt, or at DBIA’s election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgement.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions, and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.



# GENERAL CONTRACTOR'S PERFORMANCE BOND FOR DESIGN-BUILD PROJECTS

*[Note: To be used with DBIA Document No 550 or 555]  
This bond form has been endorsed by The National Association of Surety Bond Producers and  
The Surety & Fidelity Association of America*

<b>GENERAL CONTRACTOR/PRINCIPAL:</b> <i>(Name and address)</i>	<b>SURETY:</b> <i>(Name and contact information)</i>
<b>DESIGN-BUILDER/OBLIGEE:</b> <i>(Name and address)</i>	<b>PROJECT:</b> <i>(Name and location)</i>
<b>AGREEMENT BETWEEN DESIGN-BUILDER AND GENERAL CONTRACTOR:</b>  Dated:  Amount:	<b>BOND DATE:</b> <i>(Not earlier than date of Agreement)</i>  <b>BOND AMOUNT:</b>

**MODIFICATIONS TO THIS BOND:**  
*(List modifications to this Bond below. If none, write "None")*

## BOND TERMS AND CONDITIONS

**1 Binding Effect.** The General Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Design-Builder for the performance of the above-referenced Agreement between Design-Builder and General Contractor (the "Agreement"), which is incorporated herein by reference.

**2 Intent of Bond.** If the General Contractor performs its obligations under the Agreement, then the Surety's obligations under this Bond are null and void, except to participate in meetings as provided in Section 4.

**3 Waiver of Notice.** The Surety hereby waives notice of changes to the Agreement, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.

**4 Design-Builder's Obligations.** If there is no default in Design-Builder's obligations under the Agreement, then the Surety's obligation under this Bond shall arise after the following steps have been taken by Design-Builder, as a condition precedent to a Bond claim:

**4.1** The Design-Builder has first provided written notice to the General Contractor and Surety at the addresses listed on page 1 of this Bond, that Design-Builder is considering declaring the General Contractor in default and has requested and attempted to arrange a meeting with the General Contractor and Surety, to be held not later than fourteen (14) days after receipt of Design-Builder's notice, to discuss methods of performing the General Contractor's obligations under the Agreement. If the Design-Builder, General Contractor and Surety agree, the General Contractor shall be allowed a reasonable time to perform its obligations under the Agreement, but such an agreement shall not waive the Design-Builder's right, if any, subsequently to declare the General Contractor in default;

**4.2** The Design-Builder declares the General Contractor to be in default, terminates the Agreement and notifies the Surety in writing; and

**4.3** The Design-Builder has agreed to pay the balance remaining under the Agreement (i.e., the total amount payable by the Design-Builder to the General Contractor thereunder less amounts properly paid by the Design-Builder to the General Contractor, the "Contract Balance") to:

.1 The Surety, in accordance with the terms of the Agreement; or

.2 Another general contractor selected pursuant to Section 5.3 to perform the remaining obligations under the Agreement.

**5 Surety's Obligations.** When Design-Builder has satisfied the conditions of Section 4, the Surety shall promptly take one of the following actions, at the Surety's expense:

**5.1** Arrange for the General Contractor to perform and complete the remaining obligations under the Agreement, with consent of Design-Builder;

**5.2** Undertake to perform and complete the remaining obligations under the Agreement itself, through its agents or through independent contractors;

**5.3** Obtain bids or negotiated proposals from qualified general contractors acceptable to Design-Builder for a contract for performance and completion of the Agreement, arrange for a contract to be prepared for execution by Design-Builder and a general contractor selected with Design-Builder's concurrence, to be secured by performance and payment bonds equivalent to those for the Agreement, issued by a qualified surety. The Surety shall: a. make available as Work progresses sufficient funds to pay the cost of completion of the Agreement; and, b. pay to Design-Builder the amount of damages as described in Section 7;

**5.4** Waive its right to complete the Work under Sections 5.2 or 5.3, and reimburse the Design-Builder the amount of its reasonable costs to complete the Work; or

**5.5** Deny liability, in whole or in part, and notify the Design-Builder in writing, citing reasons therefor.

**6 Design-Builder's Rights.** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Design-Builder to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Design-Builder shall be entitled to enforce any remedy available to the Design-Builder. If the Surety proceeds as provided in Section 5.4, and the Design-Builder refuses the payment, or the Surety has denied liability, in whole or in part, under Section 5.5, the Design-Builder shall be entitled without further notice to enforce any remedy available to it.

**7 Damages Covered.** In any event, the Surety's obligations to the Design-Builder, and the Design-Builder's obligations to the Surety, shall not be greater than those of the Design-Builder and General Contractor to each other, respectively, under the Agreement. Subject to commitment by Design-Builder to payment of the Contract Balance of the Agreement, the Surety is obligated without duplication for:

**7.1** The responsibilities of General Contractor for correction of defective Work and completion of the Project;

**7.2** Additional legal, design professional and delay costs resulting from General Contractor's default, and resulting from the actions or failure to act of Surety under Section 5; and

**7.3** Liquidated damages, or if no liquidated damages are specified in the Agreement, actual damages caused by delayed performance or non-performance of General Contractor.

**8 Bond Liability.** If the Surety elects to act under Sections 5.1, 5.3 or 5.4, the Surety's total liability shall not exceed the Bond Amount.

**8.1** The Surety shall not be liable to the Design-Builder or others for obligations of the General Contractor that are unrelated to the Agreement, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.

**9 Beneficiaries.** No right of action shall accrue on this Bond to any person or entity other than Design-Builder or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.

**10 Dispute Resolution.** All disputes related to this Bond shall be instituted in any court of competent jurisdiction in the location in which the Project is located and shall be commenced within two (2) years after: a. the Design-Builder declares the General Contractor in default under Section 4.2; or, b. Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 10 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

**10.1** In the event of bankruptcy of the General Contractor, the Surety agrees that the General Contractor is not a necessary or indispensable party to any legal action by Design-Builder against Surety to enforce the Surety's obligations under this Bond.

**11 Notice.** Unless otherwise noted below, written notice under this Bond to Surety, Design-Builder or General Contractor shall be mailed or delivered electronically or by hard mail to the contact information shown on page 1.

*(List any alternate contact information below for notice to the Surety of any claim on this Bond. If none, then use the contact information on page 1)*

For Claims on this Bond:

*(check appropriate box)*

Use the contact information shown on page 1; or

Use the following alternate contact information:

*(fill in Surety claims administrator contact information below)*

**12 Statutory Compliance.** If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.

**13 Warranty Obligation.** The Surety's obligations to the Design-Builder for warranties of the General Contractor shall be the same as those required of the General Contractor under the Agreement, subject to the time limitation in Section 10. Unless otherwise stated below, the Surety's obligation for such warranties excludes: a) products, materials or equipment covered by a manufacturer's separate warranty; and b) claims by the Design-Builder first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Agreement.

*(List below any exceptions to the above limitations on Surety's warranty obligation, if any)*

**14 Authorization.** The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and General Contractor, intending to be legally bound hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

<b>GENERAL CONTRACTOR (AS PRINCIPAL)</b> Company:	<b>SURETY</b> Company:
Signature:	Signature:
Name and Title:	Name and Title:
	Corporate Seal
	(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title