

THINK BEFORE YOU AGREE

A very good resource and discussion on this topic is the American Institute of Architects' (AIA) Best Practices, Chapter 6.01, article "But Words Will Never Hurt Me, Marketing Must Balance Enticement Against Precision" Contributed by Thomas S. Townes, AIA, FSMPS, CPSM and Andrew J. Carlowicz, Jr.

<https://www.aia.org/best-practices/11226-but-words-will-never-hurt-me>

We may believe that liability applies only to our performance or standard of care, but it is important from the outset to promise only what you can deliver; even materials marketing your firm or pursuing a project can expose you to litigation.

Also consider that if an A/E's client insists that the word "complete" is used in a project agreement, standard language runs contrary to typical construction administration services relating to shop drawings and other submittals. AIA Document B101 (2017), Standard Form Agreement Between Owner & Architect, Article 3.4.1, states:

The **Owner** and Architect **acknowledge that**, in order to construct the Work, the **Contractor will provide additional information**, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4 (Submittals). **(Emphasis added.)**

WHAT ARE EXTREME ADJECTIVES?

Adjectives are words that describe the qualities of something. Some adjectives in English are **gradable** – that means you can have different degrees or levels of that quality. For example, the weather can be a little cold, rather cold, very cold, or extremely cold.



<https://www.espressoenglish.net/extreme-adjectives-in-english/>



Extreme adjectives or **non-gradable adjectives** are words that mean "extremely + adjective" – for example, "**freezing**" means "extremely cold." The weather can't be "a little bit freezing" or "very freezing" – because the word "freezing" itself automatically means "extremely cold"

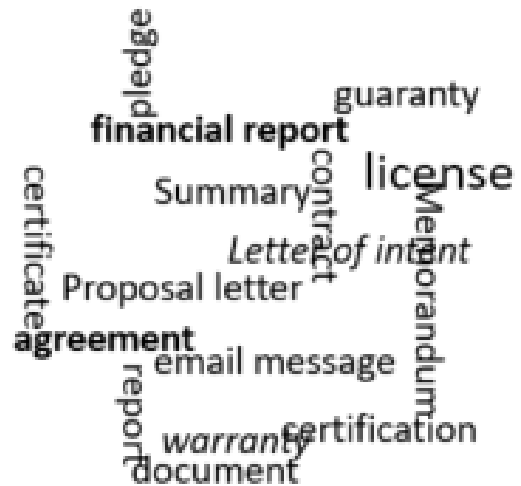
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"Cold" is a regular adjective, and "freezing" is an extreme adjective.

"EXTREME WORDS" USED AGAINST A/E's IN OWNER-DRIVEN DOCUMENTS

- All, any or every, of any kind, at all times
- Highest level of trust or strict compliance
- Accurate or sufficient for its intended purpose
- Including but not limited to ...

- Without limitation, or as determined
- Without limiting the foregoing, unconditionally
- Notwithstanding anything in this Agreement to the contrary, ...
- In detail, full-scope, entire, fully, or wholly
- Specialize, expert or expertise
- Affirm, assure, ensure or insure (*same as - guaranty or warranty not covered by professional liability insurance*)
- Adequate or complete (*all construction documents are inherently conceptual as no set is “complete”*)
- Best or error free
- Correct, coordinated or absolutely, totally
- Necessary, required or other
- Supervise or inspect and inspections
- Certify or guarantee
- Warranty, warrants, covenant
- Comport with or comply with all laws, rules and regulations
- Maximize or minimize
- Final or as-built
- Proper, orderly final or finalized
- Good and workmanlike manner
- Appropriate, or as may be appropriate, most relevant
- Verify or verification, clearly, indefinitely
- Timely, time of the essence



From my experience, in reviewing my clients’ agreements and other documents from their clients (project owners) for over 15 years, this list continues to grow over time. These “Extreme Words” may seem innocuous, and in the interest of time or without further thought, an A/E may gloss-over them.

IN CONCLUSION

Below is a sentence as the following in an A/E’s client-driven agreement with extreme words.

A/E shall perform its services **in compliance with all** laws, rules and regulations **to assure** that the project **will be completed** for **its intended purpose**. (Extreme words highlighted.)

From a risk management perspective, a more appropriate sentence would be:

A/E shall perform its services to take into account applicable laws, rules and regulations, in accordance with its standard of care of its profession.

About the Author

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The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities, and should not be construed to represent a determination of legal issues, but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

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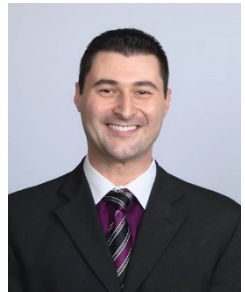
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