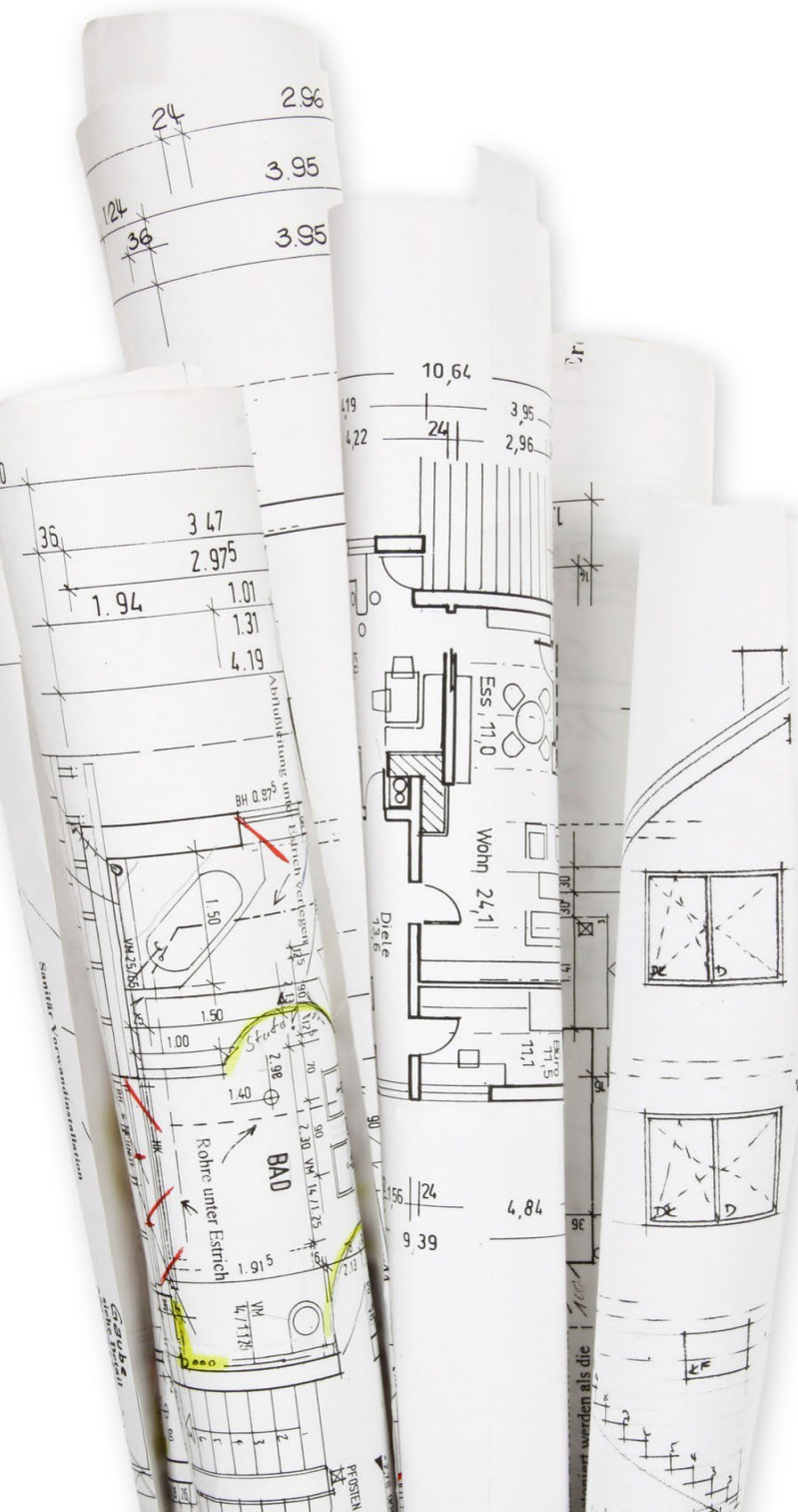


BUILDING BLOCKS

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Purchase Orders are Inappropriate for Engaging Professional Design Services

By: *Eric O. Pempus, FAIA, Esq., NCARB*
DesignPro Insurance Group

A purchase order (PO) is a legally binding document created by a buyer and presented to a seller, or vice versa. It lays out the order details, including quantity and types of products the buyer needs, as well as payment terms and delivery details. But that is for goods (pencils, chairs, flowerpots, etc.). POs are inappropriate for engaging an architect or engineer (A/E) for professional design services, and here is why.

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PURCHASING GOODS

First things first. The American Institute of Architects does recognize that are times when a design professional could be involved in the purchasing goods. It could be a situation when office supplies are needed for the office of an A/E, or when a project owner needs to “fit-out” an interior space with materials.

AIA[®] Document A152[™] – 2019

Purchase Order

PURCHASER: *(name and address)*

VENDOR: *(name and address)*

ARCHITECT: *(name and address)*

PURCHASE ORDER INFORMATION

DELIVER TO: *(name and address)*

PROJECT: *(name and address)*

Number:

Date:

IDENTIFICATION OF GOODS

The Vendor agrees to provide the following goods to the Purchaser:

(Insert a list of goods to be provided by the Vendor, including details for identification and quantities for each, or identify a separate exhibit that includes such information.)

AIA Document A152–2019 is a purchase order agreement that is intended for situations where a Purchaser will buy goods from a Vendor. A152 is an agreement for the sale of goods and is governed by the law of the place where the Project is located, including the jurisdiction’s Uniform Commercial Code as adopted.

A152 can be used to buy nearly any kind of goods. In A152, the Vendor is responsible for selling goods to the Purchaser and, unless otherwise agreed, delivering the goods to the Project site. A152 allows the parties to enter a description of the goods, identify the price and payment terms, and add delivery requirements. In situations where the Vendor will perform onsite work, such as assembly or installation, the parties should use a different agreement, such as an owner/contractor agreement or A151–2019, Standard Form of Agreement Between Owner and Vendor for Furniture, Furnishings, and Equipment (FF&E), as appropriate. A152 is drafted to be used in conjunction with A152–2019, Exhibit A, Terms and Conditions.

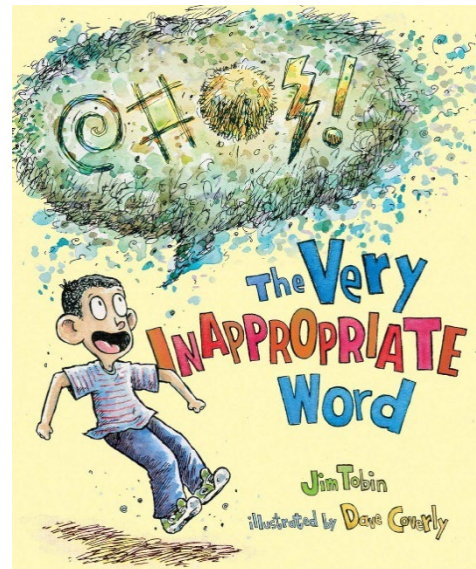
The entire AIA A152 document can be found at <https://shop.aiacontracts.com/contract-documents/6231529-purchase-order>.

BUT WHAT ABOUT PROFESSIONAL DESIGN SERVICES?

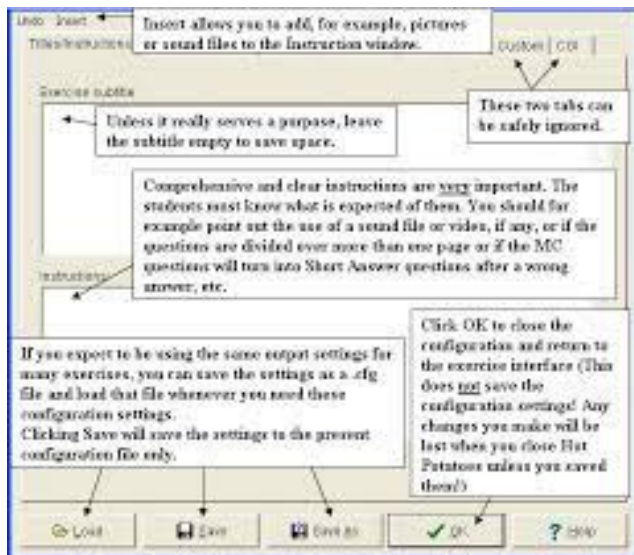
- A. Project owners (clients of A/Es) that utilize a PO form that is designed for the purchase of goods rather than for design services may have **inappropriate terms**. In addition to many file-in the blanks in a one-page standardized form, there are inappropriate terms that are found in the PO’s “fine print.” The “fine print” is a term that refers to terms and conditions, disclosures, or other important information that is not included in the main body of the PO but placed in footnotes, located in a less prominent location of the main body of the PO, or on the backside of the document. The fine print will be small and less noticeable text that contains important details.

More importantly, if the A/E does not read the fine print, there may likely be terms and conditions related to goods, not professional services. These may include intricate, complex and technical language that may be difficult to understand, warranties, guaranties, certification, exceptions, limitations, disclosures, concealed responsibilities, cancellation fees, penalties that can lead to unforeseen financial setbacks, restrictions or unintentional breaches of the PO that can leave the A/E accountable for damages, with responsibility for material defects, or legalese.

- B. And the fine print will likely have **missing terms** that should be in a professional design agreement, such as the project's program and owner supplied information, an appropriate standard of care, betterment, waiver of consequential damages, limitation of liability, ownership of the A/Es documents, lien rights, etc. The PO used for professional design services tries to take short-cuts that miss the opportunity to adequately represent the true understanding between the A/E and their client.



<https://www.amazon.com/Very-Inappropriate-Word-Jim-Tobin/dp/0805094741>



- C. There is one exception to the above. At times, a project owner desires to engage an A/E with a “master agreement” for multiple future projects. The master agreement serves as a base document, and the project owner issues a PO designed for professional services for the future project. The master agreement contains terms and conditions applicable to future projects. The PO has the scope of services for the future project, compensation for the A/E, and any other site/project specific terms for the future project.

CONCLUSION:

With this being said, the danger to the A/E is that it may be too easy and tempting to skim the fine print, not noticing the inappropriate language, or missing terms that should be included in the PO. When an A/E is presented with a PO designed for the purchase of goods, the design professional is best served to discuss with their client to switch to a more appropriate document such as an American Institute of Architects (AIA) or Engineers Joint Contract Document Committee (EJCDC) agreement for design services, which would be much better way to start a project. Otherwise, if the A/E is practicing good risk management, they will have crossed out and inserted many terms making the PO look like it has gone through a shredder.



About the Author of this Risk Management Building Block Article

As a risk manager for the last 18 years for the design profession, Eric has experience in professional liability insurance and claims, architecture, engineering, land use, law, and a unique background in the construction industry. Prior to risk management, he has 25 years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years at Kent State University's College of Architecture & Environmental Design.

As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals since 2000 on topics of ethics, contracts, and professional practice in various venues across the United States and Canada. He is a former member and chair of his city's Board of Zoning & Building Appeals for 24 years, and is a licensed architect, attorney, and property & casualty insurance professional.

His educational background includes a JD from Southwestern University School of Law, Los Angeles; Master of Science in Architecture from University of Cincinnati; and BA in psychology/architecture from Miami University, Oxford, Ohio.

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.

Disclaimer: The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individuals, groups, or institutions. This article is an expression by the author(s) to generate discussion and interest in this topic.

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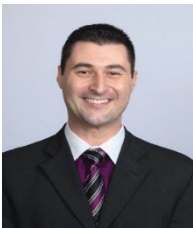
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