

Warranty Bond for Design-Build Projects

SAMPLE

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- 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.



WARRANTY BOND FOR DESIGN-BUILD PROJECTS

*This bond form has been endorsed by The National Association of Surety Bond Producers and
The Surety & Fidelity Association of America*

DESIGN-BUILDER/PRINCIPAL: <i>(Name and address)</i>	SURETY: <i>(Name and address)</i>
OWNER/OBLIGEE: <i>(Name and address)</i>	PROJECT: <i>(Name and location)</i>
BOND DATE:	BOND AMOUNT:
BOND DURATION: <i>(Check appropriate box)</i> <input type="checkbox"/> _____ <i>(State number of months or years for warranty), or</i> <input type="checkbox"/> <i>Per the Design-Build Agreement sections on Warranty</i> NOTE: See Section 7 for duration longer than five (5) years.	COMMENCEMENT: <i>(Check appropriate box)</i> <input type="checkbox"/> _____ <i>(State event that starts warranty obligation)</i> <input type="checkbox"/> <i>Per the Design-Build Agreement sections on Warranty</i>

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

BOND TERMS AND CONDITIONS

1 Binding Effect. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the warranty obligations under the Design-Build Agreement, which is incorporated herein by reference.

2 Intent of Bond. The Design-Builder is required to furnish a bond guaranteeing the performance of its warranty obligations under the Design-Build Agreement. If the Design-Builder performs its warranty obligations as set out in the Design-Build Agreement, then the Surety's obligations under this Bond are null and void; otherwise, the Surety's obligations shall remain in full force and effect.

2.1 The Surety's obligations to the Owner for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Agreement, subject to the time limitation in Section 8. 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 Owner first noticed to Surety in writing after the expiration of this Bond.

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

3 Owner's Obligations. The Surety's obligation under this Bond shall arise after the following steps have been taken by Owner, as a condition precedent to a Bond claim:

3.1 The Owner declares the Design-Builder to be in default and notifies the Surety in writing; and

3.2 The Owner has agreed to pay any remaining retainage held under the Design-Build Agreement up to, and including, the cost of performing the warranty obligations of Design-Builder to:

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

.2 Another contractor or design-builder selected pursuant to Section 4.3 to perform the remaining warranty obligations under the Design-Build Agreement.

4 Surety's Obligations. When Owner has satisfied the conditions of Section 3, the Surety shall promptly take one of the following actions, at the Surety's expense:

4.1 Arrange for the Design-Builder to perform and complete the remaining warranty obligations under the Design-Build Agreement, with consent of Owner;

4.2 Undertake to perform and complete the remaining warranty obligations under the Design-Build Agreement itself, through its agents or through independent contractors;

4.3 Obtain bids or negotiated proposals from qualified contractors or design-builders acceptable to Owner for a contract for performance and completion of the Design-Builder's warranty obligations, arrange for a contract to be prepared for execution by Owner and a contractor or design-builder selected, with Owner's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Agreement, issued by a qualified surety. The Surety shall: a. make available as warranty work progresses sufficient funds to pay the cost of completion of the Design-Builder's warranty obligations; and, b. pay to Owner the amount of damages as described in Section 6;

4.4 Waive its right to complete the Work under Sections 4.2 or 4.3, and reimburse the Owner the amount of its reasonable costs to complete the warranty work; or

4.5 Deny liability, in whole or in part, and notify the Owner in writing, citing reasons therefor.

5 Owner's Rights. If the Surety does not proceed as provided in Section 4 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 Owner to the Surety demanding that the Surety perform its obligations under this Bond and stating that the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, under Section 4.5, the Owner shall be entitled without further notice to enforce any remedy available to it.

6 Damages Covered. In any event, the Surety's obligations to the Owner, and the Owner's obligations to the Surety, shall not be greater than those of the Owner and Design-Builder to each other, respectively, under the Design-Build Agreement. Subject to commitment by Owner to payment of any remaining retainage under Section 3.2, the Surety is obligated without duplication for:

- 6.1** The responsibilities of Design-Builder for performance of its warranty obligations;
- 6.2** Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
- 6.3** Liquidated damages, or if no liquidated damages are specified in the Design-Build Agreement, actual damages caused by delayed performance or non-performance of Design-Builder's warranty obligations.

7 Bond Liability and Duration. The Surety shall not be liable to the Owner or others for obligations of the Design-Builder that are unrelated to the Design-Build Agreement, and the remaining retainage, if any, shall not be reduced or set off on account of any such unrelated obligations.

7.1 If the Bond Duration indicated on page 1 of this Bond is longer than five (5) years, the following additional terms apply:

- A. The Surety, at its sole option, may renew this Bond on an annual basis after five (5) years from the Commencement date indicated on page 1 by continuation certificate or rider setting forth new commencement and expiration dates.
- B. Should the Surety determine not to renew this Bond, then the Surety shall notify the Owner in writing thirty (30) days prior to non-renewal at the address indicated on page 1.
- C. The failure of the Surety to renew this Bond, and/or the failure of Design-Builder to provide a replacement bond, or other acceptable security, shall not be considered a breach or default by the Surety or Design-Builder on this Bond, within the effective period of this Bond, nor serve as a basis for a claim or demand on this Bond.
- D. The Owner's sole recourse for warranty obligations in the event of a failure by the Surety to renew this Bond shall be against the Design-Builder and any other guarantor, or against other security provided by the Design-Builder, if any.

7.2 If this Bond is renewed by the Surety, it shall be considered one continuous bond and in no event shall the total amount of the Surety's liability exceed the penal sum set forth herein. Regardless of the number of years this bond shall continue in force and the number of premiums which shall be payable or paid, the liability of the Surety under this Bond with respect to any Claim or Claims shall not be cumulative in amounts from year to year or from period to period.

8 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 the Owner declares the Design-Builder in default under Section 3.1. If the provisions of this Section 8 are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

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

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

10 Notice. Unless otherwise noted below, written notice under this Bond to Surety, Owner or Design-Builder 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)

11 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.

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

13 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 Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

DESIGN-BUILDER (AS PRINCIPAL) Company:	SURETY 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

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