

Construction Project Primer

Are you starting a new construction project or renovation in the coming months? Please consider the following guidelines to help your organization minimize your risk.

Whenever there is a 3rd party performing work on your premises, it's paramount to transfer your risk fully to that party (where reasonable). Types of situations that warrant your attention are building maintenance, repairs, elevator maintenance, construction/renovations, security services, temporary staffing agency contracts, aircraft chartering, food services, catered events, fireworks displays, watercraft chartering, product suppliers, environmental remediation, and many others.

Perhaps the most important thing to remember throughout any of these conversations is that **it's generally free to transfer your risk to that 3rd party**. Contractors, architects, sub-contractors, or any other vendors typically do not incur greater costs to take your risk both from a contractual and additional insured standpoint. You may encounter pushback from the 3rd parties but typically can move past the initial discomfort.

How do you get General Liability coverage under someone else's policy? There are two methods of which **both should be obtained in all instances**:

1. Contractual Liability Coverage – via Indemnity Agreement covers tort liability (not breach of contract)
2. Additional Insured Status

The samples included throughout this primer are designed as a framework for what to ask for from a contractor or vendor on premises. The document includes the following:

Part 1 addresses contractual liability & general requirements that should be in your agreements

Part 2 requests the specific limits

Part 3 outlines common contract mistakes

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Part 1: General Requirements (*Sample*)

These are the general requirements that you should request from the contractor.

1. All policies must be written with insurers maintaining an AM Best Rating of "A" IX or better and admitted to do business in the State where the contract is to be performed.
2. General Liability coverage for Premises & Operations and Products & Completed Operations is to be maintained for 10 years after the initial work is completed and Our Client and related entities and their respective officers, directors and employees must be named as Additional Insured using BOTH forms CG 20 10 and CG 20 37 during that entire period of time. Evidence of such insurance must be provided at inception of the contract and annually thereafter for the number of years specified.
3. All coverage required in this contract must be primary and non-contributory to any insurance maintained by Our Client. "Primary and non-contributory" in this clause means that Contractor's policies must provide coverage before any other applicable policy of insurance, deductible or self-insured retention program maintained by Our Client without seeking contribution from other insurance carried by Our Client and related entities and their respective officers, directors and employees.
4. Each policy must be endorsed to require at least 30 days notice of cancellation (10 days for non-payment of premium) to Our Client. If, after reasonable effort, Contractor is unable to secure such endorsement, Contractor must provide Our Client written notice of any cancellation within 3 working days of any written or oral notice of such cancellation.
5. No deductible or self-insured retention shall apply to any insurance required hereunder without the express written consent of Our Client. Should Our Client agree to a deductible or self-insured retention, Contractor agrees to be responsible for defense, including all claims and investigation expenses and any loss payments to the extent coverage would have been provided by the insurer had no deductible or self-insured retention applied to such insurance.
6. Contractor waives all rights against Our Client to the extent of any insurance carried or required to be carried under this agreement. Policies of insurance must be endorsed, as needed, to provide such waivers. Such waivers will be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Such waiver shall also apply to the extent that any deductible or self-insured retention applies to any such policy and to the extent that the insured party is underinsured.

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- 7.** These requirements apply to all work done at any time in connection with or related to this project including any warranty, rework or additional work performed following the completion of this contract.
- 8.** Neither failure to monitor compliance with these requirements nor failure to identify a deficiency from evidence provided will be considered a waiver of such requirements.
- 9.** Failure to obtain and to keep in force any of the required insurance coverage shall be deemed to be sufficient cause for termination of this contract for default.
- 10.** Contractor's liability shall not be limited to the limits of any required insurance.
- 11.** Our Client shall not be liable for payment of any premiums under any required policies of insurance.
- 12.** Our Client reserves the right to require complete copies of all required insurance policies at any time. If requested, copies must be furnished within 10 working days from the date of the request.
- 13.** All subcontractors will be required to comply with the above requirements as well. However, limits required may be lower at the discretion of the Contractor.
- 14.** Limits required may be purchased in any combination of primary and excess to achieve the required total limits
- 15.** DOCUMENTATION TO BE SUBMITTED PRIOR TO THE START OF THE WORK AND AT EACH INSURANCE RENEWAL OR REPLACEMENT UNTIL INSURANCE IS NO LONGER REQUIRED
 - a. Certificates of Insurance evidencing requirements above
 - b. Copy of Additional Insured endorsement
 - c. Copy of Waiver of Subrogation endorsement on Workers Compensation policy

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Part 2: Limits Requested (*Sample*)

The coverage required below will not be limited by any other provisions in the contract documents or elsewhere. Contractor must comply, and cause all sub-contractors of any level to comply, with the following requirements:

I. General Liability Limits Requested

Each Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg Limit	\$2,000,000
Medical Expense Limit	\$5,000

Other Considerations

- **ISO form CG 00 01** or equivalent; aggregate limit to apply per project; coverage must be on Occurrence form. "Claims Made" is not acceptable.
- **Additional Insured Entities:** Our Client and related entities and their respective officers, directors, employees, and volunteers must be named as Additional Insured
- **Additional Insured Endorsement Forms Required:** CG 20 10 Additional Insured-Owners, Lessees or Contractors (Premises/Operations) AND CG 20 37 Additional Insured-Owners, Lessees or Contractors (Products / Completed Operations). No other forms are acceptable. Both endorsements are required.
- **Coverage may not exclude or limit coverage for:** Explosion, Collapse and Underground; Contractual Liability (beyond standard ISO GL form); the Employer's Liability exclusion may not exclude coverage for an employee of ""any"" insured, only employees of a ""Named"" Insured"

II. Automobile Liability

Combined Single Limit	\$1,000,000
Hired & Nonowned Auto Liability	Included
General Aggregate Limit	1 or 2, 8, & 9

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III. Workers Compensation & Employers Liability

Workers Compensation	Per Statutory Benefits for All Employees
EL Limits – Each Accident	\$500,000
EL Limits – By Disease – Policy Limit	\$500,000
EL Limits – By Disease – Each Employee	\$500,000
Other Considerations:	Waiver of Subrogation in favor of our client

IV. Umbrella / Excess Liability

Each Occurrence	\$10,000,000 (<i>minimum limit, higher if available</i>)
General Liability	Included
Products/Completed Operations	Included
Automobile Liability	Included
Employers Liability	Included
Other Considerations:	Additional Insured required

V. Property Insured (under no circumstances will Our Client be liable for any loss or damage to any property)

- **Property Covered:** All owned and rented equipment and tools, including employee tools, used for the work
- **Perils:** Special Form perils including Theft
- **Deductible cannot exceed:** \$10,000
- **Valuation:** Replacement Cost

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VI. Contractors Design Liability (only required when Contractor will perform design services)

Limit Per Claim	\$2,000,000
Aggregate Limit	\$2,000,000

Other Considerations

- If Claims-Made Coverage must be continued for 3 years beyond the last date of work performed
- Limit to apply per project or have a limit dedicated solely to this project.

VII. Contractors Pollution Liability

Limit Per Claim	\$1,000,000
Aggregate Limit	\$1,000,000

Other Considerations

- If Claims-Made Coverage must be continued for 3 years beyond the last date of work performed
- To name as Additional Insured: Our client and related entities and their respective officers, directors, employees, and volunteers must be named as Additional Insured.

DISCLAIMER: These sample requirements are not adequate or appropriate for all situations and in all jurisdictions. Should you require legal advice, please consult an attorney.

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Part 3: Common Contract Mistakes

1. Not discussing the contractual insurance provisions until the last minute making it difficult to negotiate with the contractor
2. Agreeing to policy terms without seeking insurers approval in advance
3. No additional insured requirement
4. Inadequate / non-specific additional insured requirement
5. No Additional Insured requirement for Products/Completed Operations (if exposure exists)
6. No requirement that Additional Insured status be primary and non-contributory to AI's own insurance
7. Not addressing how SIR's or Self-insurance are to impact AI coverage
8. Using incorrect or outdated terminology
9. Including requirements which may be attainable today, but not in the future (long term contracts)
10. Vague or undefined requirements
11. Failure to customize requirements
12. Failure to monitor compliance
13. Failure to put insurer(s) on notice of an incident or claim
14. Requiring a party's insurer(s) to waive subrogation, without actually waiving the party's right in the contract.
15. No or inadequate indemnity agreement
16. Requirement to insure the indemnity agreement
17. Not including "defense" requirement in indemnity agreement
18. Contract does not reflect intent of parties