

RISK TRANSFER FOR CONTRACTORS

Prepared by:



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RISK TRANSFER FOR CONTRACTORS

General contractors often hire subcontractors skilled in a particular trade, such as plumbers, electricians or carpenters. However, they may be held legally liable for injury or damage caused by their subcontractors' work. Further, contractors are responsible for the on-site safety of their own employees, the subcontractors' employees and visitors. To protect themselves, the contractor must transfer risk. This entails shifting the risk of loss for injury or damage among the parties of a contract. General contractors transfer the risk to subcontractors they use on a particular construction project by including indemnification and hold harmless provisions as well as additional insured requirements in their construction contracts. When it comes to transferring risk, contractors and other parties in a contract are referred to as either *higher tier* or *lower tier*. The higher tier hires a lower tier contractor to perform work and transfers its risk of loss to the lower tier contractor. The purpose of this booklet is to assist your firm with some necessary tools to limit your exposure in different areas.

The following items are included:

Contractor Checklist – This is a checklist of what you should have in place with your subcontractor. A **CONTRACT** is the most important item on this list. The contract should contain an indemnification clause (a sample is included in this packet) and a hold harmless agreement.

Sample Certificate (included in PDF doc, only) – This certificate actually shows you what you should be looking for on any certificate you receive from a Subcontractor. You should be named as the Certificate Holder. The limits shown on the certificate are the minimum that you should require from all subcontractors. If a job requires higher limits, those limits should be passed on to your subcontractor.

Certificate Checklist – This is a checklist of what needs to be shown on the certificate. If any of these items are missing, the subcontractor should be notified and an updated certificate should be requested.

Insurance Requirements – This is a summary broken down into two pages. The first page includes the minimum standards to be allowed for any subcontractor. The second page includes additional coverages we would recommend you to include depending on the job.

Indemnity Agreement - In the event your current contract does not include an indemnity agreement, we strongly recommend you revise your contract according to your needs. We have included sample wording to be used as a “Higher Tier” (when you hire a subcontractor) and as a “Lower Tier” when you work for someone else. The purpose of requiring your subcontractors to include these items is to further protect you from their negligence. The purpose of changing the wording when you act as a lower tier contractor is to limit your liability to your negligent acts only.

Forms to be attached to the Certificate of Insurance
(The following forms are acceptable)

Additional Insured Endorsements:

CG 20 10 11 85 – This form names you as an additional insured for “your work”.

CG 20 10 10 01 – This form names you as an additional insured for “ongoing operations”.

CG 20 37 10 01 – This form names you as an additional insured for “completed operations”.

Note: CG 20 10 and CG 20 37 should be used together. CG 20 10 07 04 and CG 20 37 07 04 edition dates are also acceptable.

HIGHER TIER CONTRACTOR CHECKLIST

	ITEM	YES	NO
1	Written Contract	<input type="checkbox"/>	<input type="checkbox"/>
2	Broad Indemnification/Hold Harmless Agreement- sample attached	<input type="checkbox"/>	<input type="checkbox"/>
3	Contract requires Additional Insured on sub's Automobile, General Liability, and Umbrella	<input type="checkbox"/>	<input type="checkbox"/>
4	Obtain Certificate of Insurance with Endorsement CG2010 (11-85 edition) or equivalent, attached naming your company and any higher tiers such as Project owner as Additional Insured	<input type="checkbox"/>	<input type="checkbox"/>
5	Option – require Owners Contractors Protective Liability policy in your name with limits of at least \$2,000,000 / \$4,000,000.	<input type="checkbox"/>	<input type="checkbox"/>
6	Contract requires at least 1,000,000 / 2,000,000 limits on both the General Liability (with General Aggregate Limits per project) and Automobile, Plus Umbrella limits of at least \$1,000,000.	<input type="checkbox"/>	<input type="checkbox"/>
7	Contract requires Additional Insured coverage is primary and noncontributing.	<input type="checkbox"/>	<input type="checkbox"/>
8	Contract requires Notice to you of cancellation of subs General Liability, Automobile and Workers Compensation with 30 days notice.	<input type="checkbox"/>	<input type="checkbox"/>
9	Contract requires completed Operations from Additional Insured/Indemnitee for minimum of 3 to 5 years after completion of the job.	<input type="checkbox"/>	<input type="checkbox"/>
10	Monitor Certificate of Insurance.	<input type="checkbox"/>	<input type="checkbox"/>

LOWER TIER CONTRACTOR CHECKLIST

A lower tier contractor is someone who accepts the transfer of risk (through indemnification/hold harmless &/or additional insured endorsement) from another party for claims arising out of the work the “lower tier” contractor does for the “higher tier” contractor

	ITEM	Did	Did not
1	Before signing a contract with a General or Prime Contractor, understand the contractual indemnification and insurance requirements in the contract	<input type="checkbox"/>	<input type="checkbox"/>
2	Once the contractual indemnification and insurance requirements are understood, make an informed business decision as to whether or not to accept that risk/responsibility.	<input type="checkbox"/>	<input type="checkbox"/>
3	When possible, try to limit the scope of the indemnification agreement by: <ul style="list-style-type: none"> ➤ Adding “to the extent” to limit the contractor’s indemnification to the contract ➤ Be sure the contract specifies the specific job, and the contractor’s specific duties ➤ Substitute “your ongoing operations” instead of “your work” ➤ Changing “sole” to “EXCEPT TO THE EXTENT” ➤ Delete “DEFEND” 	<input type="checkbox"/>	<input type="checkbox"/>

CERTIFICATE CHECKLIST

	ITEM	YES	NO
1	Name of business	<input type="checkbox"/>	<input type="checkbox"/>
2	Policy number	<input type="checkbox"/>	<input type="checkbox"/>
3	Name and Phone number of insurance agency	<input type="checkbox"/>	<input type="checkbox"/>
4	Name of insurance company	<input type="checkbox"/>	<input type="checkbox"/>
5	General liability – limits 1,000,000 / 2,000,000	<input type="checkbox"/>	<input type="checkbox"/>
6	Automobile liability – 1,000,000	<input type="checkbox"/>	<input type="checkbox"/>
7	Umbrella liability – 1,000,000 (minimum)	<input type="checkbox"/>	<input type="checkbox"/>
8	Workers compensation stipulates there is coverage for the state to which the job is located and Employers Liability 500,000 / 500,000 / 500,000.	<input type="checkbox"/>	<input type="checkbox"/>
9	Additional insured status noted on a primary bases	<input type="checkbox"/>	<input type="checkbox"/>
10	Waiver of subrogation	<input type="checkbox"/>	<input type="checkbox"/>
11	Endorsement attached for CG2010 (11 85) or its equivalent. Endorsement numbers must be listed and include edition date.	<input type="checkbox"/>	<input type="checkbox"/>
12	30 days notice of cancellation policy is cancelled	<input type="checkbox"/>	<input type="checkbox"/>
13	Under the cancellation clause on the Certificate of Insurance ‘ENDEAVOR TO’ and ‘BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THECOMPANY, ITS AGENTS OR REPRESENTATIVES’ is crossed through .XXXXXXXXXX – See sample of certificate attached.	<input type="checkbox"/>	<input type="checkbox"/>

Retention Policy

Copies of the Additional Insured Endorsements and the Certificate of Insurance are to be filed in the appropriate job files and kept for at least ten years, or as required by particular jurisdiction.

A diary system will be established to obtain renewal copies of these documents upon their expiration with the subcontractor’s insurance company.

Insurance Requirements

Subcontractor shall procure and maintain throughout the term of the Subcontract policies of insurance from a carrier with an A.M. Best rating of "A-" or better. Subcontractors shall furnish Contractor with a Certificate of Insurance prior to commencing work to include coverage and minimum limits as follows:

Commercial General Liability

Form: Commercial General Liability including premises & operations, owners and contractors protective, broad form property damage, contractual liability, XCU & completed operations written under "occurrence" format

Minimum Limits: \$1,000,000 per occurrence / \$2,000,000 aggregate

Endorsements: General aggregate applies per project/location
Waiver of subrogation in favor of Contractor
Contractor and Owner named as additional insured including premises/operations and completed operations ***** see Additional Insured Endorsements section
30 days written notice by certified mail of reduction in coverage, cancellation or non-renewal in favor of Contractor

Automobile Liability

Form: Commercial Automobile Liability providing liability coverage for owned, non-owned or hired automobiles

Minimum Limits: \$1,000,000 combined limit

Endorsements: 30 days written notice by certified mail of reduction in coverage, cancellation, or non-renewal in favor of Contractor

Worker's Compensation & Employers' Liability

Form: Standard Policy naming Maryland or any other states where the contractor is working as a covered State(s)

Minimum Limits: Statutory worker's compensation benefits
Employers' Liability limits of \$500,000 / \$500,000 / \$500,000

Endorsements: Waiver of Subrogation in favor of Contractor and Owner
30 days written notice by certified mail of reduction in coverage, cancellation or non-renewal in favor of Contractor

Umbrella

Form: Umbrella

Minimum Limits: \$1,000,000 per occurrence / \$1,000,000 Aggregate

Endorsements: 30 days written notice by certified mail of reduction in coverage, cancellation or non-renewal in favor of Contractor

Other: Policy term to be concurrent with Commercial General Liability Policy and Automobile Liability Policy. Umbrella coverage must include as insureds all entities that are additional insureds on the Commercial General Liability (CGL)

Insurance Requirements (continued)

Additional Insured Endorsements Section

****** Subcontractor is required to add Contractor (& Owner if primary contract requires this) as an additional insured per CG 20 10 (11/85) endorsement or equivalent
(CG 20 37 10/01 is acceptable if it is accompanied by CG 20 10 10/01 or CG 20 37 07 04 and CG 20 10 07 04).**

All coverage shall be primary and non-contributory with any other insurance available to Contractor or Owner Contractor shall provide evidence of coverage (certificate of insurance) prior to commencing work.

Additional coverages

Builder's Risk/Installation Floater (Optional)

Form:	Special form causes of loss including collapse. No theft limitations should apply.
Minimum Limits:	On site limit no less than 100% of Subcontractor's contract price Off site/transit limit no less than 10% of on site limit
Endorsements:	30 days written notice by certified mail of reduction in coverage, cancellation or non-renewal in favor of Contractor
Other:	Coverage to terminate only upon final completion and acceptance of work by Contractor

Pollution (Optional)

Form:	Pollution liability for on-site exposures. Coverage to include site clean-up.
Minimum Limits:	\$1,000,000 per occurrence / \$1,000,000 aggregate
Endorsements:	Contractor and Owner to be additional insured Inclusion of lead, asbestos, mold and fungi as covered causes of loss 30 days written notice by certified mail of reduction in coverage, cancellation or non-renewal in favor of Contractor

Sample Indemnification Wording

All contracts and modifications to your contracts should be reviewed, approved, and integrated by your attorney, prior to use in any document. The information contained herein is intended to be used solely as a guideline.

Higher Tier Indemnification – Sample to be used for your sub-contractors

The Work performed by the Subcontractor shall be at the risk of the Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, (at Subcontractor's sole expense) and hold harmless the Contractor, the Owner (if different from Contractor), Architect, Architect's Consultants, affiliated companies of Contractor, their partners, joint ventures, representatives, members, designees, officers, directors, shareholders, employers, agents, successors, assigns, and employees of any of them ("Indemnified Parties"), from and against any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and costs, and consultants' fees and costs) ("Claims") arising directly or indirectly out of the obligations herein undertaken or resulting out of operations conducted by the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such injury, claim, damage, loss or expense is caused in part by a party indemnified hereunder, save and except claims or litigation caused by or resulting from the sole negligence of the party indemnified hereunder. Said indemnity and defense obligations shall further apply, whether or not said injury, claim, damage, loss or expense arise out of the concurrent act, omission, or negligence of the Indemnified Parties, whether active or passive

Subcontractor's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnified Parties for such matters which are indemnified hereunder are fully and finally barred by applicable Laws.

Lower Tier Indemnification – When working as a subcontractor for others

To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless Contractor and Owner and their agents and employees from and against claims, suits, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Ongoing Operations, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Subcontractor and its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.