

TRISURE

Insurance • Bonds • Employee Benefits



Essentials of Risk Transfer

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Risk Transfer

- Down streaming legal liability
- Risk transfer is the prospective shifting of a chance of loss
- The financial burden of certain accidental losses which have not occurred or which may occur are assigned to other parties who are contracting with you.

Risk Transfer

- One party assumes the financial consequences of certain liabilities of another through a contract in the event of a specified loss.
- Risk transfer for contractors is generally done through a contract...
- Risk transfer **IS NOT** solely done through insurance

Common Risk Transfer Situations

Lessor → Lessee

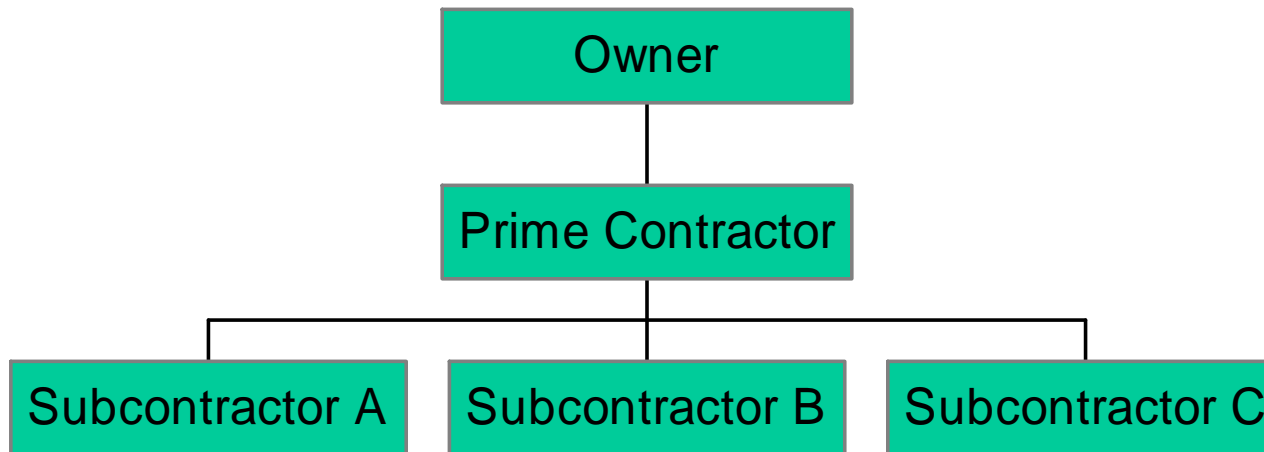
Owner → Contractor

Contractor → Subcontractor

Seller → Buyer

Down streaming Your Liability

Typical Job Organization



Contracts- Minimizing Risk

- What is a contract?
 - An agreement between two parties in which there is an action done by one party and compensation by the other.
 - Verbal agreements are often used in the construction industry, however, this can lead to misunderstandings and make it more difficult to enforce a contract if there is a breach.

Benefits of Written Contracts

- **Enforceability**
 - Having an agreement in writing can prevent any disagreements as to what each party was to do under the agreement
- **Clarification**
 - Will ensure that everyone understands their duties under the contract
- **Protection**
 - By having a written contract, you can obtain valuable information as well as require certain provisions and protections for risk transfer.

What is usually included in a written contract?

- Contracting Parties- names, physical & mailing addresses & contact personnel
- Project name and scope
- Price
- Special Provisions
- Timing
- Warranty
- Insurance Provisions
- What constitutes default
- Indemnification provisions

Indemnity Provisions

- Indemnification is an assurance that the party to be protected (the indemnitee) will not have to bear the ultimate legal or financial responsibility for the damages and losses caused by certain specified actions of the party providing the indemnification (the indemnitor)
- Indemnification is reimbursement for injury or damage.

Indemnity Contract

- In your contracts with subcontractors, you want to have an assurance that the subcontractors will indemnify you.
- This obligation doesn't exist at common law so you must specifically state it in the contract.

Indemnity Contract

- If at any future time, you should experience a loss due to the actions of the indemnitor, the indemnitor will bear the financial responsibility for that loss.

Three Forms of Indemnity Contracts

1. Broad Form

2. Intermediate Form

3. Limited Form

Broad Form

- Unrestricted contract that obligates the indemnitor to reimburse the indemnitee for losses that the indemnitor did not cause, even in part, including losses caused solely by the indemnitee.
- Caution- Unenforceable in North Carolina courts

Intermediate Form

- An indemnity contract that obligates the indemnitor to indemnify the indemnitee for losses that the indemnitor caused only in part, or did not cause at all, excepting only losses caused solely by the indemnitee.

Limited Form

- Also known as **Comparative Negligence Form**
- This is key in North Carolina, a contributory negligence state. NC law states if you are guilty at all you recover nothing from the other party.
- This rule stands unless you have contractually agreed otherwise.

Comparative Negligence

- Liability is apportioned according to the degree of fault
- The indemnitor would indemnify the indemnitee only to the extent of bodily injury or property damage caused by the indemnitor.

Duty to Defend

- The indemnification portion of the contract has to specify that the subcontractor agrees to **“DEFEND, indemnify, and hold harmless the contractor and Owner...from and against any claim, cost, expense or liability, (including attorney’s fees) caused by, arising out of...**

Hold Harmless Agreement

- Often construction contracts include both indemnification agreements and hold harmless agreements.
- Under a Hold Harmless Agreement, the party assuming risk agrees not to attempt to recover any portion of damages from the other contracting party.

Closing Loopholes

- Indemnification Agreements are not an absolute shield.
- An additional form of protection is to require that the Subcontractor list the General as an **“Additional Insured”** on the Subcontractors policy.

Insurance as a Risk Transfer Tool

- A properly written contract, requiring indemnification, hold harmless agreements, waiver of subrogation and a Certificate of Insurance is only a beginning.
- A Certificate of Insurance **DOES NOT TRANSFER RISK!**

Certificates of Insurance

- COI's provide very limited information on the actual coverage provided by an insured.
- A COI does not bind, amend, or guarantee coverage in a policy.
- A COI is a date sensitive document that only “endeavors” to notify the certificate holder of a change in status of policyholder.

Certificates of Insurance cont.

- A COI can be used only as an indication that the Certificate Holder has been named as an Additional Insured per the requirements of the written contract.

Certificates of Insurance cont.

BASIC COVERAGE AND LIMITS

Commercial General Liability

- Verify coverage includes the following:
 - Independent Contractors
 - Blanket Contractual Liability
 - Includes coverage for Pollution or Professional (if required)
 - Additional Insured Endorsement (CG 20 33 10 0)

Additional Insured Status

- A person or entity who can make claims against an insurance policy that was procured and paid for by someone else.
- The party paying for the policy is referred to as the “named insured.”
- You may contractually (must be in writing), obligate your subcontractors to list you as an Additional Insured on their policies.

Named Insured Wording

- “Named Insured”- The person or entity to whom an insurance policy is issued.
- The Named Insured is the primary indemnitee under the insurance policy for which the insurance policy provides coverage and the duty to defend.
- Provides coverage for claims arising out of “your” ongoing operations.

Additional Insured Wording

- Modifies the definition of “Named Insured”
- “Who is an Insured” is amended to include as an insured any person or organization for whom you are performing operations when such persons or organizations have agreed in writing in a contract or agreement that such person or organization be added as an Additional Insured on your policy...

Additional Insured Wording

...Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.

Additional Insured Wording

- A copy of the endorsement naming the Certificate Holder as an Additional Insured should be required and received prior to commencing work.
- Insurance carriers will provide Additional Insured coverage on two types of forms:
 - Blanket and Specific Job

Blanket and Specific Job

- Additional Insured:
- **Blanket Form**
 - Insurance Company will name GC as Additional Insured when required in written contract...no specific name of job or contractor is required.
- **Specific Job**
 - Insurance Company will name GC as Additional Insured on a job by job basis, and it must be required by written contract.

Additional Insured Forms

- Additional Insured forms must include coverage for both ongoing operations and completed operations/products.
 - Extends coverage beyond when the work is completed.
- Review the forms carefully-There are dozens of AI forms that can be utilized, naming everything from:
 - Vendors
 - Engineers/Architects
 - Surveyors
 - Lessors of leased equipment
 - Mortgagors
 - Church Members, etc...

Primary Coverage

- The written agreement and the Cert of Insurance must state the following....
- ***“Where required by a written contract or agreement, this insurance is primary and/or non-contributory as respects any other insurance issued to the Additional Insured, and such other insurance shall be excess and/or non-contributory, whichever applies with this insurance.”***

Waiver of Subrogation

- Terms in which one party relinquishes any rights to make claims against the other for damages that are covered by insurance.
- Example - If a sub's employee is injured, and covered by Work Comp, the Waiver in the contract will prevent the sub's insurance company from trying to recover from the GC for the benefits paid.

Waiver of Subrogation

- An endorsement and a premium charge usually apply for Workers Comp.
- GL and Auto normally allow the insured to waive such transfer of rights of recovery as long as the contract was reached prior to any loss occurring.

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ACORD CERTIFICATE OF LIABILITY INSURANCE DP 9 DP DATE: 03/16/10
 DTR-98-2

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES EVIDENCED HEREIN.

INSURERS AFFORDING COVERAGE NAIC #

INSURER: Miscellaneous
 POLICY: A good carrier

COVERAGES

DEFINITIONS OF TERMS ARE SET FORTH IN THE ACORD 26 (2010/01) WHICH IS INCORPORATED BY REFERENCE INTO THIS CERTIFICATE. THE POLICY NUMBER, DATE, AND COVERAGE ARE SUBJECT TO THE TERMS, CONDITIONS AND EXCLUSIONS OF THE POLICY. COVERAGE IS AFFORDED BY THE POLICIES DESCRIBED HEREIN SUBJECT TO THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES.

SECTION	COVERAGE	TYPE OF COVERAGE	POLICY NUMBER/DATE	INSURER	AMOUNT
A	GENERAL LIABILITY	<input checked="" type="checkbox"/> BODILY INJURY AND PROPERTY DAMAGE	POLICY NUMBER/DATE		\$1,000,000
		<input checked="" type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS			\$2,000,000
		<input checked="" type="checkbox"/> POLLUTION			\$1,000,000
		<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY			\$1,000,000
B	AUTOMOBILE LIABILITY	<input checked="" type="checkbox"/> BODILY INJURY AND PROPERTY DAMAGE	POLICY NUMBER/DATE		\$1,000,000
		<input checked="" type="checkbox"/> POLLUTION			\$1,000,000
A	BUSINESS OVERSIGHT LIABILITY	<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY	POLICY NUMBER/DATE		\$1,000,000
		<input checked="" type="checkbox"/> POLLUTION LIABILITY			\$1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	<input checked="" type="checkbox"/> WORKERS COMPENSATION	POLICY NUMBER/DATE		\$100,000
		<input checked="" type="checkbox"/> EMPLOYERS LIABILITY			\$100,000
A	Professional Liab		POLICY NUMBER/DATE		\$1,000,000
B	Pollution Liab		POLICY NUMBER/DATE		\$1,000,000

PROPERTY OF OPERATING REGULATORY AGENCIES. THIS IS NOT A CONTRACT. THE GENERAL LIABILITY POLICY WILL NAME AS ADDITIONAL INSURED (SPECIFIED) THE CERTIFICATE HOLDER, ITS OFFICERS, AFFILIATES, HEIRS AND ASSIGNS TO THE FULLEST EXTENT APPLICABLE, AND WILL INCLUDE PRODUCTS/COMPLETED OPERATIONS (SEE CG2010 AND CG2037 (OR EQUIVALENT)) ON A PRIMARY AND NON-CONTRIBUTORY BASIS. WAIVER OF SUBROGATION IS PROVIDED ON BODILY INJURY AND WORK COMP.

CERTIFICATE HOLDER
 Certificate Holder (Insured)
 Mailing Address
 City NC 27340

CANCELLATION
 SHOULD ANY OF THE ABOVE COVERSAGES BE CANCELLED OR EXPIRE, THE CERTIFICATE HOLDER SHALL BE RESPONSIBLE FOR THE CANCELLATION OF THIS CERTIFICATE. THE CERTIFICATE HOLDER AGREES TO HOLD THE INSURER HARMLESS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, THAT MAY BE ASSERTED AGAINST THE INSURER BY ANY THIRD PARTY AS A RESULT OF THE CANCELLATION OF THIS CERTIFICATE.

ACORD 26 (2010/01) The ACORD name and logo are registered marks of ACORD. All rights reserved.

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section III – Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
<small>Information required to complete this schedule, if not shown above, will be shown in the Declarations.</small>	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**ADDITIONAL INSURED — OWNERS, LESSEES OR
CONTRACTORS — COMPLETED OPERATIONS — AUTOMATIC
STATUS WHEN REQUIRED IN CONSTRUCTION
AGREEMENT WITH YOU**

COMMERCIAL GENERAL LIABILITY
CG 79 21 01 05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. SECTION II — WHO IS AN INSURED** is amended to include as an additional insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".
- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

This coverage shall be excess with respect to the person or organization included as an additional insured by its provisions; any other valid and collectible insurance that person or organization has shall be primary with respect to this insurance, unless this coverage is required to be primary and not contributory in the contract or agreement referred to above.

**ADDITIONAL INSURED — OWNERS, LESSEES OR
CONTRACTORS — COMPLETED OPERATIONS**

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37A 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

Any person or organization with whom you agreed to provide insurance such as is afforded under this endorsement because of a written contract, agreement, or permit.

Location And Description of Completed Operations:

Various, except for liability arising out of the rendering, or failure to render, any professional, architectural, engineering or surveying services.

Additional Premium:

Included

(If no entry appears above, information required to complete this endorsement will be shown in the Declaration as applicable to this endorsement.)

SECTION II — Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to their liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

COMMERCIAL GENERAL LIABILITY
CG 20 33 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf.
- In the performance of your ongoing operations for the additional insured.
- A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.
- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
- This insurance does not apply to:
1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, make, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
 2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
 - b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**WC 00 03 13
WAIVER OF OUR RIGHT TO
RECOVER FROM OTHERS ENDORSEMENT**

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on _____ at 12:01 A.M., standard time, forms a part of
Policy No. _____ Endorsement No. _____ Premium (if any) \$ _____
of the _____
(NAME OF INSURANCE COMPANY)
issued to _____

Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

2008/03/13/0003/0003



Summary- Risk Transfer 11 Steps

1. Implement a standardized agreement and/or purchase order with the correct risk transfer wording. When in doubt, consult your agent or attorney. Make sure all your agreements are complete, in writing and do not allow subs to commence work without all documentation signed and in your files.

Summary- Risk Transfer 11 Steps cont.

2. Signed, Written Contract or Purchase Order Before Any Work Commences.
3. Original, Signed Certificate of Insurance Prior to Work Beginning - include system to monitor all certs are properly renewed.
4. Contractor/Owner are named as Additional Insured on all certificates
5. Verify Subcontractor has acceptable limits of Insurance

Summary- Risk Transfer

11 Steps cont.

6. Additional Insured Status -copy of actual endorsement.
7. Coverage of Subcontractor is PRIMARY.
8. Subcontractors agree not to subcontract any lower tier subs without verifying insurance
9. Verify all contracts include provisions for Hold Harmless/Indemnification, Waiver of Subrogation, and a Duty to Defend GC and Owner

Summary- Risk Transfer

11 Steps cont.

10. Verify that subcontractor has coverage for Blanket Contractual Liability. (usually automatically included in standard Commercial General Liability form)
11. Require in contract that subs comply with all safety policies, programs and OSHA regulations in the performance of all their work, duties and obligations to maintain a safe working environment.