



CONSTRUCTION CONTRACTS TOOLKIT

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Terminology Guide

TERM	DEFINITION
CG2037 10-01	A specific ISO additional insured endorsement that provides coverage for completed operations. This endorsement was created by ISO because the CG2010 was revised to exclude completed operations, therefore leaving a coverage gap for contractors.
Completed Operations	An exposure to loss that arises out of the contractor's completed work (e.g., a contractor builds a balcony that, after the work is completed, collapses and injures others).
Indemnification Agreement	A component of the construction contract that describes the extent of risk and types of damages that are being assumed by a downstream party to the contract (i.e., subcontractor-indemnitor).
Indemnification Agreement - Broad Form	Broadest form of risk transfer that transfers all risk to include sole negligence to the downstream party to the contract.
Indemnification Agreement - Intermediate Form	Broad form of risk transfer that transfers all risk except sole negligence to the downstream party to the contract.
Indemnification Agreement - Limited Form	Often thought of as a comparative negligence form of risk transfer that transfers nearly all risk to the downstream party to the contract when the injury or damage arises out of the negligent actions of the downstream party to the contract.
Ongoing Operations	An exposure to loss faced by contractors that arises out of the contractor's operations prior to completion (e.g., a contractor is operating a crane and causes injury in the operation of that crane).
Primary & Noncontributory	Construction contract provision that requires the subcontractor's additional insured coverage to apply prior to any other available insurance (e.g., insurance that may be held by the contractor). Additionally, the term "noncontributory" means that the subcontractor's insurance carrier cannot seek contribution toward settlement from the contractor's insurance.
Sole Negligence Liability	Liability that solely rests with only one contractor, with no liability shared among other parties to the construction project. This version of risk transfer, while one-sided, can be seen in some contract indemnification agreements.
Subcontractor Agreement	Title often assigned to a construction contract. Also referred to as a "Contractor-Subcontractor Agreement."
Vicarious Liability	A legal principle that assigns liability for an injury or damage to a person who did not cause the injury but who has a special legal relationship to the person who did act negligently. For example, when a subcontractor causes an injury or damage, the contractor can be held vicariously liable due to the special legal relationship that exists between the parties.
Waiver of Subrogation	Construction contract provision that requires one party (and their insurance carrier) to not pursue recovery of damages from another party in the contract.

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Construction contracts can be overwhelming. As such, Acuity created this toolkit to assist our agents and insureds in many aspects surrounding construction contracts.

There are two categories of brochures: those created to assist agents, and those created to assist both agents and insureds.

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For Agents & Insureds

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A close-up photograph of a hand holding a pen over a document. The document features a house icon with a grid pattern. The scene is set on a desk with a yellow folder and a yellow hard hat visible in the background. A white banner with the text "FOR AGENTS" is overlaid on the image.

FOR AGENTS

Construction contracts often require contractors to provide certain guarantees with respect to their insurance policies. It is important that you understand both the intent of the contract language and what to expect from Acuity on each contract topic below. This document is intended to cover a variety of requests that you may see.

Disclaimer – This document is meant as a guide for how Acuity policy language would respond in many instances, but there may be exceptions on how a specific account may be written. If in question, consult with your underwriter.

COVERAGE FORMS

Liability Coverage Form - Commercial General Liability or Bis-Pak		
Contract Topic	Contractual Intent	Acuity Response
CG2503 / CG2504 Limits apply separately per project and per location	Requirement that a separate general aggregate limit apply for each designated project or location.	Acuity CGL and Bis-Pak forms automatically include the Per Project/Per Location Aggregate in the Limits of Insurance section of the form. No additional endorsements are needed.
Work Performed by a Subcontractor (Independent Contractor Coverage)	Provide coverage for damage caused by work performed by a subcontractor working on the insured's behalf. Some carriers may exclude this by attaching CG-2294, Damage to Work Performed by Subcontractors on Your Behalf.	The unendorsed CGL and Bis-Pak forms provide coverage for work performed by a subcontractor. Acuity does not generally add this exclusion.
Subsidence	Assurance that the policy does not have subsidence exclusion for losses arising out of subsidence of the ground/structure.	Acuity CGL and Bis-Pak Liability do not exclude subsidence.
Earth Movement	Assurance that the policy does not have an earth movement exclusion for losses caused by all types of earth or land movement.	Acuity CGL and Bis-Pak Liability do not have a built in earth movement exclusion. In some states, we may choose to add this exclusion in certain situations. Discuss with your underwriter if in question.
Mold	Obtain coverage for mold caused by the insured's work.	It is industry standard to exclude mold. In some instances, Acuity can provide a limited buyback; discuss with your underwriter for acceptability.

COVERAGE FORMS

Liability Coverage Form - Commercial General Liability or Bis-Pak

Contract Topic	Contractual Intent	Acuity Response
Residential or Multifamily Exclusion	Carriers may exclude coverage for construction work on residential, tract, or multifamily housing, particularly in certain states where construction defect claims have been heavily prevalent. Contract intent is to make sure the policy would not exclude coverage for losses resulting from this type of work.	Acuity does not add this endorsement in most states. Some Acuity states present considerable construction defect exposures related to residential construction and an exclusion may be used. Contact your underwriter for questions on any specific states.
Pollution	Provide coverage for certain pollution events.	Acuity can provide a buyback for liability of up to \$1,000,000 using CG-2415F/CB-0494, Limited Pollution Liability Extension Endorsement. Contact your underwriter for additional details. (Not valid in Vermont)
EIFS - Exterior Insulation Finishing Systems	Provide coverage for mold and moisture-related problems caused by Exterior Finishing Systems.	It is industry standard to exclude EIFS exposures. Acuity does not exclude coverage for this, except for contractors involved in habitational work.
Professional Design Liability	If the contractor does any design work in conjunction with the project, contract intent is that this would not be excluded.	If design work is done by the insured, a professional exclusion may apply (Bis-Pak form has a professional exclusion; CGL may have CG-2279F, Exclusion Contractors – Professional Liability). This can be modified to only apply to design work done for a third party (CG-2280F/CB-7133, Limited Exclusion – Contractors - Professional Liability). Discuss with your underwriter when a risk completes their own design work and also consider requesting Contractors' Errors and Omissions Coverage.
Contractual Liability	Provide coverage for liability that is assumed in an oral or written contract.	The unendorsed CGL and Bis-Pak forms provide this contractual liability coverage within the definition of "insured contract" or if the insured would have been legally liable in absence of a contract. If seeking coverage under contractual liability, in most cases, defense is included in the limits.
Defense in addition to limits for additional insureds	Provide defense costs for additional insured even when they exceed limit of insurance.	To ensure that a claim includes defense costs outside the limit, add each upstream party as an additional insured.
Severability of Interest (Cross Liability)	Separately represent each named insured under the policy. This means each will receive defense separately until the policy limit is exhausted.	Cross Liability is provided under the CGL or Bis-Pak; however, only one per occurrence and one aggregate limit applies for the policy.
XCU - Explosion, Collapse, and Underground Property Damage	Older ISO edition dates of the standard CGL form excluded damage from these hazards; given such, some contracts still require verification that coverage is not excluded.	Acuity does not generally add this exclusion.

COVERAGE FORMS

Railroad Protective Coverages and OCP Coverages

Contract Topic	Contractual Intent	Acuity Response
Contractual Liability – Railroad Coverage (CG2417 is requested)	<p>Obtain coverage for work within 50 feet of the railroad.</p> <p>Standard CGL policy excludes coverage for work within 50 feet of a railroad. To remove the exclusion, the definition of an "insured contract" must be revised.</p>	<p>Add CG-2417F or CB-7300, Contractual Liability Railroads.</p> <p>Specific job(s) must be scheduled.</p> <p>Contact your underwriter for a quote.</p>
Railroad Protective Policy	<p>Obtain a separate policy in the name of the railroad.</p>	<p>Obtain separate policy with form CG-0035F, Railroad Protective Liability Coverage.</p> <p>Contact your underwriter for a quote.</p>
OCP - Owners and Contractors Protective Liability Policy	<p>Obtain a separate policy on behalf of the owner or general contractor for a specific project.</p>	<p>Obtain separate policy with form CG-0009R, Owners and Contractors Protective Liability Coverage Form.</p> <p>Contact your underwriter for a quote.</p>

Workers' Compensation / Employers' Liability

Contract Topic	Contractual Intent	Acuity Response
Alternate Employer Coverage Endorsement	<p>Clarifies that insured's WC policy would cover employees working for named alternate employer.</p>	<p>Add WC000301, Alternate Employer Endorsement.</p> <p>Discuss acceptability with your underwriter.</p>
USL&H (United States Longshore & Harbor Workers Act) Coverage	<p>Provide coverage for employees working on or next to structures adjoining navigable waters. It does not cover masters or members of the crew of a vessel.</p>	<p>Add WC000106A, Longshore and Harbor Workers' Compensation Act Coverage Endorsement.</p> <p>Discuss acceptability with your underwriter.</p>
Other States Coverage	<p>Provide coverage for employees traveling through or temporarily working in states other than states listed in 3A on the policy.</p>	<p>Acuity typically provides other states coverage automatically (for all states other than ND, OH, WA, & WY).</p>

COVERAGE FORMS

Commercial Excess Liability		
Contract Topic	Contractual Intent	Acuity Response
Add Additional Insured to Commercial Excess Liability	Provide higher limit of coverage for Additional Insured.	Acuity Excess Liability is follow form; therefore, a separate Additional Insured endorsement on the Excess Liability is not needed.
Primary and Noncontributory Additional Insured	Require Additional Insured coverage in Commercial Excess Liability to apply prior to any other available insurance. In addition, the subcontractor's insurance won't seek contribution from the upstream party's insurance.	Add CU-7098, Revision of Other Insurance Condition For Additional Insureds – Auto Status, to make additional insured coverage under the Excess Liability primary and noncontributory.
Excess Liability Waiver of Subrogation	Obtain an endorsement that waives any subrogation rights against party named in the contract.	A separate waiver is not needed if already endorsed on the underlying lines of coverage.
Limits apply separately per project and per location	Request that coverage apply separately for each project or location.	Acuity automatically provides Excess Liability coverage limits that apply separately for each project and each location at no additional charge.

Builders' Risk		
Contract Topic	Contractual Intent	Acuity Response
Builders' Risk or Installation Floater for damage by fire, theft, vandalism, malicious mischief, or collapse	Obtain property coverage for the project.	Acuity may provide an Installation Floater, Builders' Risk, or Property in the Course of Construction. These endorsements/coverage forms cover materials, temporary locations, and work in progress while a contractor is performing operations.

ENDORSEMENTS

Notice of Cancellation		
Contract Topic	Contractual Intent	Acuity Response
All policies shall provide (XX) days notice of cancellation	Identify to upstream parties if insurance is canceled.	Add IL-7002, Notice of Cancellation Endorsement. This will not provide notification for nonpayment of premium. (CG-7135 is used in IL for CGL.)
Notice of a material change	Upstream party to a contract wants notice when any substantial change is made to the policy.	Agent / insured must provide notification when required.
Notice of nonpayment of premium for (XX) days	Upstream party to a contract wants notice when a downstream contractor does not pay the premium, which then cancels the policy.	Acuity only provides notice of nonpayment of premium to the named insured. Agent / insured must provide notification to another party when required.

Waiver of Subrogation				
Contract Topic	Contractual Intent	Commercial General Liability*	Bis-Pak*	Workers' Compensation
Waiver of Subrogation - Scheduled	Waive right of recovery.	CG-2404F(5-09)	CB-0497F(1-06)	WC000313 (All states except KY, NH, TX, & UT). <hr/> WC430305 (Utah only). <hr/> Not valid in Missouri if either party is a contractor.
Waiver of Subrogation - Automatic Status (requires a written contract)	Waive right of recovery.	CG-7264(12-19)	CB-7252(12-19)	All states except KY, NH, & TX: Same forms as above. Request blanket wording. TX: WC420304B. <hr/> Not valid in Missouri if either party is a contractor.

* If Acuity enhancement liability endorsement—either general liability or Bis-Pak—is on the policy, automatic waiver of subrogation for written contracts is included.

ENDORSEMENTS

Additional Insured		
Contract Topic	Contractual Intent	Acuity Response
CG2010(11-85)	<p>Obtain sole negligence additional insured coverage using “arising out of” language.</p> <p>Coverage must insure for ongoing and completed operations.</p>	<p>Add CG-2010F(10-01)/CB-7331(10-01) for Ongoing Operations and CG-2037F(10-01)/CB-7333(10-01) for Completed Operations.</p> <p>Underwriter approval is needed.</p>
CG2010(11-93)	<p>Obtain sole negligence additional insured coverage using “arising out of” language.</p> <p>Coverage must insure for ongoing and completed operations.</p>	<p>Add CG-2010F(10-01)/CB-7331(10-01) for Ongoing Operations and CG-2037F(10-01)/CB-7333(10-01) for Completed Operations.</p> <p>Underwriter approval is needed.</p>
CG2010(10-01) & CG2037(10-01)	<p>Obtain sole negligence additional insured coverage using “arising out of” language.</p> <p>Coverage must insure for ongoing and completed operations.</p>	<p>Add CG-2010F(10-01)/CB-7331(10-01) for Ongoing Operations and CG-2037F(10-01)/CB-7333(10-01) for Completed Operations.</p> <p>Underwriter approval is needed.</p>
CG2010(7-04) & CG2037(7-04)	<p>Obtain additional insured coverage using “caused in whole or in part by” language.</p> <p>Additional Insured coverage is not provided unless the named insured is partially at fault.</p> <p>Ongoing and completed operations coverage is requested.</p>	<p>Add Owners, Lessees or Contractors CG-2010F(7-04)/CB-7331(4-10) for Ongoing Operations and CG-2037F(7-04)/CB-7333(4-10) for Completed Operations.</p> <p>For details on the edition date and coverage options for these forms, see the additional insured charts on the following pages.</p>
CG2010(4-13) & CG2037(4-13)	<p>Obtain additional insured coverage “to the extent permitted by law” to prevent a broad agreement from being deemed void or enforceable.</p> <p>Coverage “will not be broader than that which you are required by the contract or agreement to provide.”</p> <p>The insurance carrier will “pay on behalf of the additional insured” the “amount of insurance required by the contract” or “applicable Limits of Insurance shown in the Declarations,” <u>whichever is less.</u></p>	<p>Add Owners, Lessors or Contractors CG-2010F(4-13)/CB-7331(7-13) for Ongoing Operations and CG-2037F(4-13)/CB-7333(7-13) for Completed Operations.</p> <p>These forms and language represent the newest updates provided by ISO and adopted by Acuity.</p>
Any other person or organization you are required to add as an Additional Insured under the contract or agreement with you.	Obtain additional insured status for all upstream parties to a contract that do not have a written contract or agreement.	Acuity provides coverage for these parties in all of our Contractors Automatic Status Additional Insured Endorsements.

ENDORSEMENTS

Additional Insured		
Contract Topic	Contractual Intent	Acuity Response
Primary and Noncontributory	<p>Require Additional Insured coverage to apply prior to any other available insurance.</p> <p>Prevent insurance carrier from seeking contribution from the upstream party's insurance.</p>	<p>The ISO "other insurance" provision in the CGL or Bis-Pak form provides primary coverage for additional insureds.</p> <p>When language must be present on an endorsement, add CG-2001R or CB-1488, Primary and Noncontributory – Other Insurance Condition. See Contractors Additional Insured Endorsements.</p>
Additional Insured completed operations coverage must remain in place up to the statute of limitations	Additional insured coverage must be in place until the state no longer allows a party to be responsible.	Confirm state statute of limitation for completed jobs and keep additional insured on completed operations AI until that time has passed.

ENDORSEMENTS

ADDITIONAL INSURED FORMS

For all of our automatic status additional insured forms, Acuity adopted 2013 ISO language broadening "Who Is An Insured" to include "Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above." This language is broader in that it could pick up coverage for a party that the contract required to be added but the written contract wasn't directly with that party.

Acuity offers a wide range of additional insured endorsements. Coverage and pricing vary with each edition of the form. This guide includes several additional insured forms charts. "Who Is An Insured" language varies between the new and old charts.

GENERAL ADDITIONAL INSURED ENDORSEMENTS

	Designated Person or Organization	Automatic Status
Generic	CG-2026F(4-13)	CG-2043R(12-19)
	CB-7034(7-13)	Not available in Bis-Pak
Lessor of Leased Equipment	CG-2028F(4-13)	CG-2034R(4-13)
	CB-7011(7-13)	CB-7186(7-13)
Managers or Lessors of Premises	CG-2011F(4-13)	Not available
	CB-0402(7-13)	
Co-Owner of Premises	CG-2027R(4-13) No charge	Not available
	CB-0411(7-13) No charge	
Lessor of Leased Property	CG-2024F(4-13) No charge	Not available
	CB-0410(7-13) No charge	

ENDORSEMENTS

CONTRACTORS ADDITIONAL INSURED ENDORSEMENTS

Use of certain forms may be restricted in some states; consult your Acuity underwriter.

Primary and Noncontributory status may be achieved by adding either CG-2001R or CB-1488 in conjunction with the applicable additional insured form(s).

ISO EDITION LANGUAGE 2013 (“TO THE EXTENT PERMITTED BY LAW” AND “WILL NOT BE BROADER THAN”)

Restricts additional insured coverage to the extent permitted by law and the coverage limits spelled out in the contract.

Keeps 2004 ISO wording of “caused, in whole or in part, by” which clarifies intent to EXCLUDE additional insured sole negligence.

	Designated Person or Organization	Automatic Status
Owners, Lessees or Contractors (Ongoing Operations)	CG-2010F(4-13)	CG-2033R(6-13)
	CB-7331(7-13)	CB-7433(7-13)
Owners, Lessees or Contractors (Completed Operations)	CG-2037F(4-13)	CG-7277(6-13)
	CB-7333(7-13)	CB-7245(7-13)

ISO EDITION LANGUAGE 2004 (“CAUSED, IN WHOLE OR IN PART, BY”)

Clarifies intent to EXCLUDE additional insured’s sole negligence.

	Designated Person or Organization	Automatic Status
Owners, Lessees or Contractors (Ongoing Operations)	CG-2010F(7-04)	CG-2033R(5-13)
	CB-7331(4-10)	CB-7433(5-13)
Owners, Lessees or Contractors (Completed Operations)	CG-2037F(7-04)	CG-7277(5-13)
	CB-7333(4-10)	CB-7245(5-13)

ISO EDITION 2001 LANGUAGE (“ARISING OUT OF”)

REQUIRES UNDERWRITING APPROVAL PRIOR TO USE.

Never intended to provide coverage for additional insured’s sole negligence, but may do so because of court interpretations.

	Designated Person or Organization	Automatic Status
Owners, Lessees or Contractors (Ongoing Operations)	CG-2010F(10-01)	CG-2033R(10-01)
	CB-7331(10-01)	CB-7433(10-01)
Owners, Lessees or Contractors (Completed Operations)	CG-2037F(10-01)	CG-7277(10-01)
	CB-7333(10-01)	CB-7245(10-01)

GENERAL

Contract Topic	Contractual Intent	Acuity Response
Certificates of Insurance	Confirm that required insurance was obtained.	A certificate of insurance is not a contract of insurance and does not, in itself, provide a guarantee of coverage. Any coverage listed on the certificate must be endorsed to the policy. The agency must secure required coverage by separate request from the certificate of insurance for coverage to be in force.
Insurer must have an A.M. Best Rating no less than...	Guarantees carrier meets a certain level of financial stability.	Acuity is rated A+ by A.M. Best.

DISCLAIMERS

This document is not intended to provide a determinative answer as to or whether a particular contract is valid or coverage exists for the Acuity insured. Any party using this guide should consult with experienced construction counsel and examine the specifics of project requirements and not rely on this reference guide solely to meet the requirements of any project or other contractual relationship. The use of its content has significant legal and insurance consequences. The use of its content as anything other than an educational resource, or in lieu of competent professional services and advice from an attorney or insurance professional, may have significant legal or insurance consequences. This educational guide is not intended as a substitute for competent professional services and advice. Consultation with an attorney and an insurance or surety adviser is strongly encouraged.

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Date of agreement: _____ Project location: _____

Project description: _____ Project duration: _____

Client: _____ Sum: \$ _____

Parties to contract:

Owner: _____ General contractor: _____ Other parties: _____

Contract Documents: Supplemental contract documents referenced Yes No

If yes: Prime contract Subcontract agreement General conditions Modifications Others

Ensure all supplemental documents are obtained/reviewed when possible.

General comments: _____

Check all that apply

Comments/Notes

INDEMNIFICATION AGREEMENT – RISK TRANSFER¹

Select Risk Transfer: Broad Intermediate Limited

Client is taking on negligence of others Yes No

Insurance coverage consistent with risk level assumed Yes No

Compliant with state anti-indemnification laws Yes No
(Project location state typically determines applicable state law)

COMMON INSURANCE REQUIREMENTS²

Commercial General Liability

\$ _____ Each occurrence

\$ _____ Personal and advertising

\$ _____ General aggregate per project per location

\$ _____ Products and completed operations aggregate

Waiver of subrogation required Yes No

Project state is on the policy Yes No

Additional Insured Coverage Required Yes No

Specific AI form numbers required _____

Primary and noncontributory requirements Yes No

Completed operations requirement Yes No

Number of years required _____

Parties required to be an additional insured _____

Additional coverages required _____

Prohibited policy exclusions _____

COMMON INSURANCE REQUIREMENTS - CONTINUED

Workers' Compensation & Employers' Liability

Coverage A - Workers' Compensation

Coverage B - Employers' Liability

\$ _____ Bodily injury each accident

\$ _____ Bodily injury by disease/policy limit

\$ _____ Bodily injury by disease/each employee

Waiver of subrogation required Yes No

Project state is on the policy Yes No

Owners/member/exec coverage required Yes No

Additional coverages required _____

Prohibited policy exclusions _____

Commercial Auto Liability

\$ _____ Bodily injury

\$ _____ Property damage

\$ _____ Combined single limit

Hired and nonowned requirement Yes No

Primary and noncontributory requirements Yes No

Additional insured requirement Yes No

Parties required to be an additional insured _____

Additional coverages required _____

Prohibited policy exclusions _____

Excess Liability

\$ _____ Each occurrence

\$ _____ Aggregate

Lines of insurance covered by excess _____

Follow form required Yes No

Waiver of subrogation required Yes No

Primary and noncontributory requirement Yes No

OTHER INSURANCE REQUIREMENTS (may not be required for all contracts)

30 Day Notice of Cancellation Required Yes No

Lines required _____

Errors & Omissions Liability

Required Yes No

Occurrence/per claim limits _____

Extended reporting required Yes No

Years required _____

OTHER INSURANCE REQUIREMENTS - CONTINUED (may not be required for all contracts)

Professional Liability

Required Yes No

Occurrence/per claim limits _____

Extended reporting required Yes No

Years required _____

Pollution Liability

Required Yes No

Applicable lines _____

Occurrence/per claim limits _____

Owners and Contractors Protective Liability

Required Yes No

Occurrence/per claim limits _____

Railroad Protective Liability

Required Yes No

Occurrence/per claim limits _____

Builders' Risk

Provided by: Owner General contractor Subcontractor Other

Limits Required _____

Occurrence/per claim limits _____

Performance and Payment Yes No

Additional Coverages Required

ADDITIONAL RISK MANAGEMENT CONSIDERATIONS

Legal Counsel Review

Contract reviewed by legal counsel Yes No

If yes, within the past three years Yes No

Scope of Work

Clear and complete description of activities Yes No

Client agrees with activities as described Yes No

Ensure client's project tasks are clearly outlined and consistent with client's understanding of responsibilities.

ADDITIONAL RISK MANAGEMENT CONSIDERATIONS - CONTINUED

Dispute Resolution

Choice of law (a/k/a forum selection clause) Yes No

Choice of law state venue _____

Arbitration provision Yes No

Several factors can contribute to which court would preside over disputes. Key factors are the choice of law clause in the contract, state location of the project, or the incorporation state of the parties to the contract.

Ensure that the method of resolution and venue are not disadvantageous to client.

Safety and Equipment

Client is responsible for safety measures Yes No

Client safety requirements _____

Safety equipment to be provided by client _____

Unclear Terms/Conditions

Note:
If you feel your client cannot comply with the contract terms, they should negotiate directly with the upstream parties to the contract, or advice of legal counsel should be obtained.

**WE'VE GOT YOU
AND YOUR CLIENTS
COVERED**



**WITH CONSTRUCTION
CONTRACTS CONNECTION**

Questions on construction contracts?

Careful review of construction contracts is essential to ensure contractors are protected. Reviewing contracts can be challenging, and questions often arise about whether a contractor's insurance coverage aligns with contractual requirements.

Acuity can help

Acuity's Construction Contracts Connection is a cost-free service that answers specific questions regarding whether an insured's contractual requirements are addressed with their current coverage through Acuity.

This could include common questions such as:

- The additional insured requirements seem to conflict with the indemnification agreement. What Acuity coverage forms should be provided to comply with the contract?
- The additional insured requirements are not clearly stated in the contract. What coverage forms should I provide?
- Should my client agree to a contract that requires the ISO CG 20 10 11/85 additional insured endorsement? Is this type of policy allowed by state law?

Acuity's Construction Contracts Connection service is for specific and targeted questions regarding an actual contract. The service is not designed to provide a complete contract review or determine whether contract terms are favorable to an insured.

Getting started

To take advantage of Acuity's Construction Contracts Connection service, simply:

- Pose a specific question to your Acuity underwriter via email.
- Cite or include the section of the Acuity insured's contract in question.
- Include the entire contract when feasible.
- Include any other relevant documentation, such as certificates of insurance.

After consulting with legal counsel, your underwriter will provide a prompt response.

DISCLAIMERS

Acuity Disclaimer: The information received from Acuity Construction Contracts Connection does not amend, or otherwise affect, the provisions or coverages of any insurance policy issued by Acuity. It is not a representation that coverage does or does not exist for any particular policy, claim, or lawsuit under any such policy. Coverage depends on the facts and circumstances involved in the claim or lawsuit, all applicable policy provisions, and any applicable law. Availability of coverage referenced can depend on underwriting qualifications and state regulations.

By providing this service, Acuity does not waive its rights under any policy contract which is the subject of any Acuity Construction Contracts Connection inquiry, nor does Acuity waive its right to assert exclusions, limitations, or any other terms of any policy contract which is the subject of any Acuity Construction Contracts Connection inquiry.

Acuity Construction Contracts Connection is not intended to provide a determinative answer as to or whether a particular contract is valid or coverage exists for the Acuity insured. The Acuity insured should consult with experienced construction counsel and examine the specifics of that particular case.

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**FOR AGENTS
AND INSURED**

PURPOSE OF A CONSTRUCTION CONTRACT

Construction contracts (i.e., subcontractor or subcontract agreements) are designed in part to ensure financial costs associated with job site losses rest with those who have fault – the agreement insulates owners and general contractors against assuming liability for losses that do not result from their negligence. Also, the contract ensures subcontractors are accepting responsibility for only damages resulting from their work and their negligence.

Without construction contracts, contractors are leaving any job site dispute resolution up to the courts, which is a lengthy and very expensive legal proposition.

The two key provisions from a liability and insurance standpoint are the:

- Indemnity agreement (see paragraph 7, page 2 of 6) and
- Insurance requirements (see paragraph 8, page 2 of 6)

Indemnity agreements describe the extent of risk and types of damages that are being assumed by the parties to the subcontract agreement. In an indemnity agreement, one party (usually a subcontractor) agrees to make another party whole again in the event of a job site loss, such as property damage or injury. Within the indemnity agreement, the subcontractor is often required to “hold harmless” the general contractor, which essentially means that the lower tier contractor (often a subcontractor) will make payments owed and will not seek recovery for payments from a higher tier party (owner or general contractor).

The other key provision of construction agreements is usually titled “Insurance” or “Insurance and Bonds.” This section is also highly important as it will describe specific insurance requirements, such as limits, waivers of subrogation, primary and noncontributory obligations, and may even specify specific versions of additional insured endorsements.

KEY ELEMENTS OF A CONSTRUCTION CONTRACT

- **Location & Scope of Work:** Location and scope of work is defined for all contractors involved in the project
- **Scheduling:** Schedule of work and completion of work is defined and clear
- **Payment:** Payment conditions and terms are clearly defined
- **Authority:** Authority for decisions on the job site (change orders, supplements, cost changes, terms of notifications) is clearly defined
- **Liability-Indemnification Agreements:** Liability for property damage or injury (both ongoing operations and completed operations) is placed on the appropriate parties
- **Insurance:** Insurance responsibilities are clearly defined and rest with the appropriate parties: limits, additional insured obligations, waivers of subrogation, primary and noncontributory requirements
- **Workmanship:** Guarantee of workmanship and obligations when faulty work is performed
- **Penalties:** Ramifications for breaching contract terms are specified and clear

Statement of Purpose: The attached subcontract agreement is provided to you as an example of a contract that provides these key contractual provisions. It is intended as an example for illustrative purposes only.

STANDARD SUBCONTRACT AGREEMENT

Labor and Materials

This Subcontract is made this _____ day of _____, 20____ by and between _____ (“Contractor”) and _____ (“Subcontractor”).

Contractor has entered into a contract with _____ (“Owner”) to furnish services, labor, material, and equipment for the construction of _____ (“Project”) on the property located at _____ (“Project Site”), pursuant to plans, drawings, and specifications prepared by _____ (“Architect” or “Engineer”), which contract consists of the contract, plans, drawings, specifications, general conditions, supplemental conditions, special conditions, any addenda or amendments # _____, the bond (if any), the invitation to bidders (if any), the instructions to bidders (if any), and the proposal (if any) (collectively the “General Contract”).

The Contractor has made available to the Subcontractor all of the above documents, and the Subcontractor is responsible for obtaining copies of any documents pertinent to its work, and the above has been carefully examined by the Subcontractor.

THE SUBCONTRACTOR AGREES AS FOLLOWS:

1. To furnish all labor, material, skill, and equipment necessary or required and to perform all the work necessary for:

(Scope of Work)

2. To pay for all materials, labor, and equipment used in or in connection with the performance of this Subcontract, when and as bills or claims become due, and to save and protect the Project, the Owner, and the Contractor from all claims and mechanics' liens on account thereof, and to furnish satisfactory evidence to the Contractor, when and if requested, that it has complied with the above requirements. This provision shall not be construed as a waiver of the right of the Subcontractor to file and enforce a lien claim against the Owner in the event of the Contractor's failure to pay the Subcontractor.
3. To begin the work of this Subcontract as soon as the Project is ready for such work or, within ___ calendar days after being notified in writing by the Contractor. To complete the work of this Subcontract as required by job progress or within the following time limits:

(Specific dates that need to be met)

4. To proceed with the work in any orderly and reasonable sequence directed by the Contractor. To abide by the Contractor's decision as to the allotment of all storage and working space on the Project.
5. No extension of time for performance of this Subcontract shall be recognized by the Contractor without the written consent of the Contractor. If, however, Subcontractor is delayed in the performance or completion of the Subcontract work for reasons beyond its control, then, with timely notice, the time of the performance or completion of said work shall be extended accordingly, provided the cause of the delay is of a type set forth in the General Contract which justifies an extension of time for completion of the General Contract.

6. To save harmless the Contractor and all other subcontractors from any and all losses or damage occasioned by the failure of the Subcontractor to carry out the provisions of this Subcontract, unless such failure results from causes beyond the control of the Subcontractor. Loss or damage shall include, without limiting the generality of the foregoing, legal fees, and disbursements paid or incurred by the Contractor as part of the loss or damage or to enforce the provisions of this paragraph.
7. To the fullest extent permitted by law, the Subcontractor agrees to assume entire responsibility and liability for all damages or injury to all persons, whether employees or otherwise, and to all property, arising out of it, resulting from or in any manner connected with, the execution of the work provided for in this Subcontract, or occurring or resulting from the use by the Subcontractor, his agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, the Subcontractor, or third parties; and the Subcontractor, to the fullest extent permitted by law, agrees to defend, indemnify, and save harmless the Contractor, its agents and employees from all such claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees the Contractor incurs to defend such claims, along with legal fees and disbursements paid or incurred to enforce the provisions of this paragraph, arising out of or resulting from performance of the work of this Subcontract, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Subcontractor further agrees to obtain, maintain, and pay for such general liability insurance coverage and endorsements as will insure the provisions of this paragraph.
8. To obtain, maintain, and pay for such insurance as may be required by the General Contract, by the provisions of this Subcontract, or by law, to include without limitation, workers' compensation, commercial general liability, comprehensive automobile liability, and if specified in the General Contract or this Subcontract, builder's risk insurance, protecting the Contractor and Subcontractor against claims for bodily injury or death or for damage to property occurring upon, in, or about the Project arising out of the Subcontractor's work, whether such claims arise during Subcontract performance or subsequent to completion of operations under this Subcontract, with limits in amounts at least equal to those specified below or, if none are specified, those specified in the General Contract. Such insurance coverage shall include, but is not limited to: premises-operations, products-completed operations, and blanket contractual to insure the indemnification obligations contained in paragraph 7.
- a. Commercial General Liability.** The Subcontractor's Commercial General Liability policy must name the Contractor, the Owner, and others as required in the General Contract, as ADDITIONAL INSUREDS, with ongoing operations and completed operations coverage equivalent to that provided by ISO Forms CG 2010 and CG 2037. The insurance policy to which this Additional Insured endorsement is added shall apply on a primary basis, and the Additional Insured's own insurance policies, if any, shall be noncontributory. General aggregate limit is provided on a per project basis.
- i. LIMITS
1. General Aggregate \$2,000,000
 2. Products/Completed Operations Aggregate \$2,000,000
 3. Personal and Advertising Injury \$1,000,000
 4. Each Occurrence \$1,000,000
- b. Automobile** (including coverage for any automobile, all owned automobiles, hired automobiles, and non-owned automobiles).

- i. LIMITS
 1. Bodily Injury (Per Person) \$1,000,000
 2. Bodily Injury (Per Accident) \$1,000,000
 3. Property Damage \$1,000,000
 4. Bodily Injury/Property Damage (CSL) \$1,000,000

c. Excess Liability

- i. \$1,000,000 per Occurrence, \$1,000,000 Annual Aggregate

d. Workers' Compensation and Employers Liability (must extend to every employee, including owners) at statutory limits.

Such insurance is to be issued by a financially responsible company or companies licensed to do business in the state where the Project is located, with an A.M. Best Rating of A- or better. Before beginning any work under this Subcontract, Subcontractor will provide insurance certificates showing compliance with these insurance requirements and indicating the coverages and limits cannot be materially changed or cancelled without at least thirty (30) days prior written notice to the Contractor.

Subcontractor agrees to waive all rights of subrogation against the Contractor, Owner, and Architect, and shall cause each of its subcontractors to waive all rights of subrogation against the Contractor, Owner, and Architect, their agents and employees, as respects loss, damage, claims, suits, or demands, howsoever caused:

- a. To real or personal property, vehicles, equipment, tools, etc. owned, leased, or used by Subcontractor or Subcontractor's employees, agents, or sub-subcontractors; and
- b. To the extent such loss, damage, claims, suits, or demands are, or should be, afforded coverage by the Subcontractor's required or any other insurance maintained by the Subcontractor. This waiver shall apply to all first-party property, equipment, vehicle, and workers' compensation claims (unless prohibited under applicable state statutes), and all third-party liability claims. This waiver shall apply to all deductibles, retentions, or self-insured layers applicable to the required or any other insurance maintained by the Subcontractor. If necessary, Subcontractor agrees to endorse the required insurance policies to permit waivers of subrogation in favor of Contractor, Owner, and Architect as required hereunder. Subcontractor further agrees to hold harmless and indemnify Contractor, Owner, and Architect for any loss or expense incurred as a result of Subcontractor's failure to obtain such waivers of subrogation from the insurers.

The Contractor does not represent that any builder's risk or property insurance applicable to the Subcontract Work, if any, is adequate to protect the interests of the Subcontractor. It shall be the obligation of the Subcontractor to determine whether such insurance is in effect and provides adequate protection for its insurable interests, or whether the Subcontractor should purchase and maintain supplementary property insurance that it deems necessary to protect its interests in the Subcontract Work.

9. To accept responsibility for all damage caused by the Subcontractor, to clean all surfaces soiled by the Subcontractor, and to protect the work performed by the Subcontractor, it being understood that the standards of protection shall not be less than those specified in the General Contract or required by law, and to be responsible for any defective or improper work or material caused by its failure so to do. If any dispute arises between the Subcontractor and another subcontractor as to which is responsible for any item of damage, the dispute shall be submitted to the Contractor for decision and determination as to responsibility.

10. The Subcontractor and its subcontractors shall take all safety precautions with respect to the work, shall comply with all safety measures required by the General Contract and with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority for the safety of persons or property.
11. Not to assign or sub-let this Subcontract or any part thereof, and not to assign any money due or to become due hereunder, without first obtaining the written consent of the Contractor.
12. To be bound to the Contractor by the terms of the General Contract, to conform to and to comply with the provisions of the General Contract, and to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes in and by the General Contract toward the Owner, insofar as they are applicable to this Subcontract. Where any provision of the General Contract between the Owner and the Contractor is inconsistent with any provision of this Subcontract, this Subcontract shall govern.
13. To employ no person whose employment on or in connection with this Subcontract may be objectionable to the Contractor and to remove any such person when objected to by the Contractor; all upon reasonable grounds.
14. That the Contractor or its authorized representative shall have the right to order in writing changes to this Subcontract as made to the General Contract by the Architect, Engineer, and/or Owner; that fair adjustments shall be made in the Subcontract price for such change; and that no change shall be allowed, or made by the Subcontractor, or paid for by the Contractor unless and until authorized by the Contractor or its authorized representative in writing before the change has begun.
15. To give written notice to the Contractor of all claims for extras, for extensions of time, and for damage for delays or otherwise in accordance with the General Contract, allowing the Contractor to give timely notice to the Owner. Timely notice shall mean three (3) working days prior to the expiration of the relevant notice period in the General Contract.
16. To guarantee the Subcontract to the same extent that the Contractor is obligated to guarantee its work under the General Contract.
17. In case the Subcontractor shall fail when and if required by the Contractor, to correct, replace, and/or re-execute faulty or defective work done and/or materials furnished under this Subcontract, or repeatedly and persistently to complete or proceed with this Subcontract within the schedule agreed to by the parties or the time herein provided for, or to make payment when due to subcontractors or suppliers for labor or materials in accordance with the respective agreements between the Subcontractor and its subcontractors and suppliers, or to comply with any substantial term of this Subcontract, then the Contractor may give the Subcontractor a written notice to cure the Subcontractor's default. If the Subcontractor fails within three (3) working days after receipt of the notice of default to commence and continue satisfactory correction of such default with diligence and promptness, then the Subcontractor shall be in default of this Subcontract and the Contractor upon an additional three (3) calendar days notice in writing to the Subcontractor shall have the right to terminate this Subcontract and finish the Subcontractor's work, replace and/or re-execute such faulty or defective work or materials, either through its own employees or through a contractor or subcontractor of its choice, and to charge the cost thereof to the Subcontractor, together with any liquidated or actual damages caused by a delay in the performance of this Subcontract.
18. In case of default on the part of the Subcontractor under the terms of this Subcontract, the material, supplies, tools, and construction equipment of the Subcontractor shall be left on the job for the use of the Contractor in completing the work covered by this Subcontract.

19. To comply with all federal and state laws, codes, and regulations and all municipal ordinances and regulations effective where the work under this Subcontract is to be performed, and to pay all costs and expenses connected with such compliance, to pay all fees and taxes, including sales and use taxes, and also to pay all taxes imposed by any state or federal law for any employment insurance, pensions, old age retirement funds, or any similar purpose, and to furnish all necessary reports and information to the appropriate federal, state, and municipal agencies, with respect to all of the foregoing, the same as though the Subcontractor was in fact the Contractor, and to hold the Contractor, each other subcontractor, and the Owner harmless from any and all losses or damage occasioned by the failure of the Subcontractor to comply with the terms of this paragraph.
20. If any part of the Subcontractor's work depends for proper execution or results upon the work of the Contractor, any other subcontractor or any other separate contractor on the Project, the Subcontractor shall inspect and promptly report to the Contractor any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution and results. Failure of the Subcontractor to so inspect and report shall constitute an acceptance of the work of the Contractor, other subcontractors, or other separate contractors, as fit and proper to receive its work.
21. The cleanup and removal of all debris left on jobsite upon completion of this Subcontract is the responsibility of the Subcontractor, and will be completed within three (3) working days of written notification by the Contractor, after which the cleanup will be done by the Contractor, with the cost of the cleanup charged to the Subcontractor.

THE CONTRACTOR AGREES AS FOLLOWS:

1. To employ, and does hereby employ the Subcontractor to do the work described in paragraph 1 hereof, subject to the provisions of this Subcontract.
2. To pay the Subcontractor for the full and prompt performance of this Subcontract, subject to the terms and conditions hereof, the sum of _____ (\$ XXX,XXX).
3. To include in the Contractor's monthly estimate to the Owner, the value of all work, labor and materials of the Subcontractor properly incorporated into the Project, in accordance with the provisions of this Subcontract for which estimates have been furnished by the Subcontractor and approved by the Contractor. Upon learning that the amount certified due for the Subcontractor is different from the amount requested by the Subcontractor, the Contractor shall immediately so advise the Subcontractor and furnish such information as the Contractor may have for the difference, and so long as the Subcontractor is not in default hereunder, to pay the Subcontractor, within seven (7) days upon receipt thereof from the Owner, the amount received by the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein. A retainage of ____ % will be held on all invoices.

If allowed by the General Contract, payment shall be made on account of inventory, materials, or equipment not incorporated in the Project but delivered and suitably stored at the site or at some other location agreed upon in writing; such payments to be made in accordance with the terms and conditions of the Contract Documents.

4. Final payment including all retention becomes due and payable within 30 days after Architect's certification of final payment, subject to the terms of the deferred payment clause below. At all times the Subcontractor shall be paid to the extent that the Contractor has been paid on the Subcontractor's account.

5. Subcontractor agrees that if the Owner has not paid Contractor on account of Subcontractor's Work for reasons not caused by Subcontractor or Contractor, then Contractor shall not be obligated to pay Subcontractor any progress or final payment for Subcontractor's Work until the Contractor has completed all efforts (including appeals) to obtain a final judgment against the Owner for amounts unpaid on account of the Subcontractor's Work. Contractor agrees to initiate and diligently prosecute a claim against the Owner for unpaid payments on account of the Subcontractor's Work for reasons not caused by Subcontractor or Contractor within thirty (30) calendar days of receiving a written request to do so from Subcontractor. Subcontractor agrees to pay a proportionate share of Contractor's costs, including attorneys' fees incurred, and to cooperate with Contractor in prosecuting such claims.
6. If arbitration of disputes is provided for in the General Contract, any dispute arising between the Contractor and the Subcontractor under this Subcontract, including the breach thereof, shall be settled by arbitration in the manner provided for in the General Contract.
7. If notification of any claims has been made against the Subcontractor or the Contractor arising out of labor or materials furnished for the Project or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Subcontract, the Contractor may, at his discretion, withhold from such amounts otherwise due or to become due hereunder a sum adequate to cover said claims and any costs or expenses arising or to arise in connection therewith pending legal resolution thereof. This right of the Contractor shall not be exclusive of any other rights of the Contractor herein or by law provided.
8. The failure of the Contractor to make payments as and when herein provided shall, in addition to all other rights, entitle the Subcontractor to suspend all work and shipments during the continuance of such default on the part of the Contractor, and shall further entitle the Subcontractor to an extension of time for the performance of the work covered by this Subcontract.
9. Except in an emergency or to enforce safety requirements, not to issue or give any instructions, orders, or directions to any employee or workman of the Subcontractor other than persons Subcontractor has designated as the persons at the work site having supervisory responsibility for the Subcontract work.
10. This Subcontract, together with riders _____ (attached hereto or enclosed herewith) and made a part hereof, constitutes the entire understanding of the parties and supersedes any prior proposals or agreements.

IN WITNESS WHEREOF, the Contractor and the Subcontractor have executed this Subcontract the day and year first written above.

Subcontractor	Contractor
Signature: _____	Signature: _____
Title: _____	Title: _____
Date: _____	Date: _____

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A QUICK REFERENCE TO COMMON SUBCONTRACTOR AGREEMENT PROVISIONS

The relationship between a contractor and subcontractor is a common one found in business today. With the right insurance and contract, this relationship can be a good one. It is only when expectations are not clearly defined that issues may start to arise.

Before entering into an agreement with a subcontractor, you should have proper insurance coverage, a contract that's been reviewed by your lawyer, and a solid understanding of any applicable state laws. This checklist can be used to ensure your subcontractors have the insurance that is required to protect your interests (and theirs) while on the job. This checklist is intended to help make expectations clear during the initial bidding process and beyond. It cannot replace a contract or be used as a substitute for certificates of insurance.

The following items are key provisions Acuity recommends be present on any contract. While some contracts may outline more and some less, Acuity has identified these for our sample contract that is also available on the Acuity website. Since every job and every company has unique exposures, it is still essential that your contract be reviewed by a lawyer.

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Date

Contractor Name
Street Address
City, State, Zip

Subcontractor Name
Street Address
City, State, Zip

RE: Contract Requirements/Bidding Process

Salutation:

Upon entering into a contract with _____, the subcontractor, _____, shall be required to provide the following insurance items and provide a certificate of insurance to that effect. The contract will take precedent if there are any inconsistencies.

Commercial General Liability

- \$1,000,000/\$2,000,000 limits
- CGL includes CG 25 03 (per project aggregate)
- Additional insured requirements:
 - Covers ongoing operations (CG 20 10 7/04 or equivalent)
 - Covers completed operations (CG 20 37 7/04 or equivalent)
- Subcontractor's insurance is primary/noncontributory
- Waiver of subrogation required

Commercial Auto Liability

- \$1,000,000 limit
- Hired/nonowned auto required
- Additional insured endorsement applies

Workers' Compensation & Employers' Liability

- Coverage A (workers' compensation)
- Coverage B (employers' liability) with 100/500/100 or statutory required limits
- Waiver of subrogation required

Excess Liability

- \$1,000,000 limit
- Subcontractor's insurance is primary/noncontributory

Other Insurance Requirements

- Notice of cancellation required
- Insurance carrier has an A.M. Best rating of "A-" or better

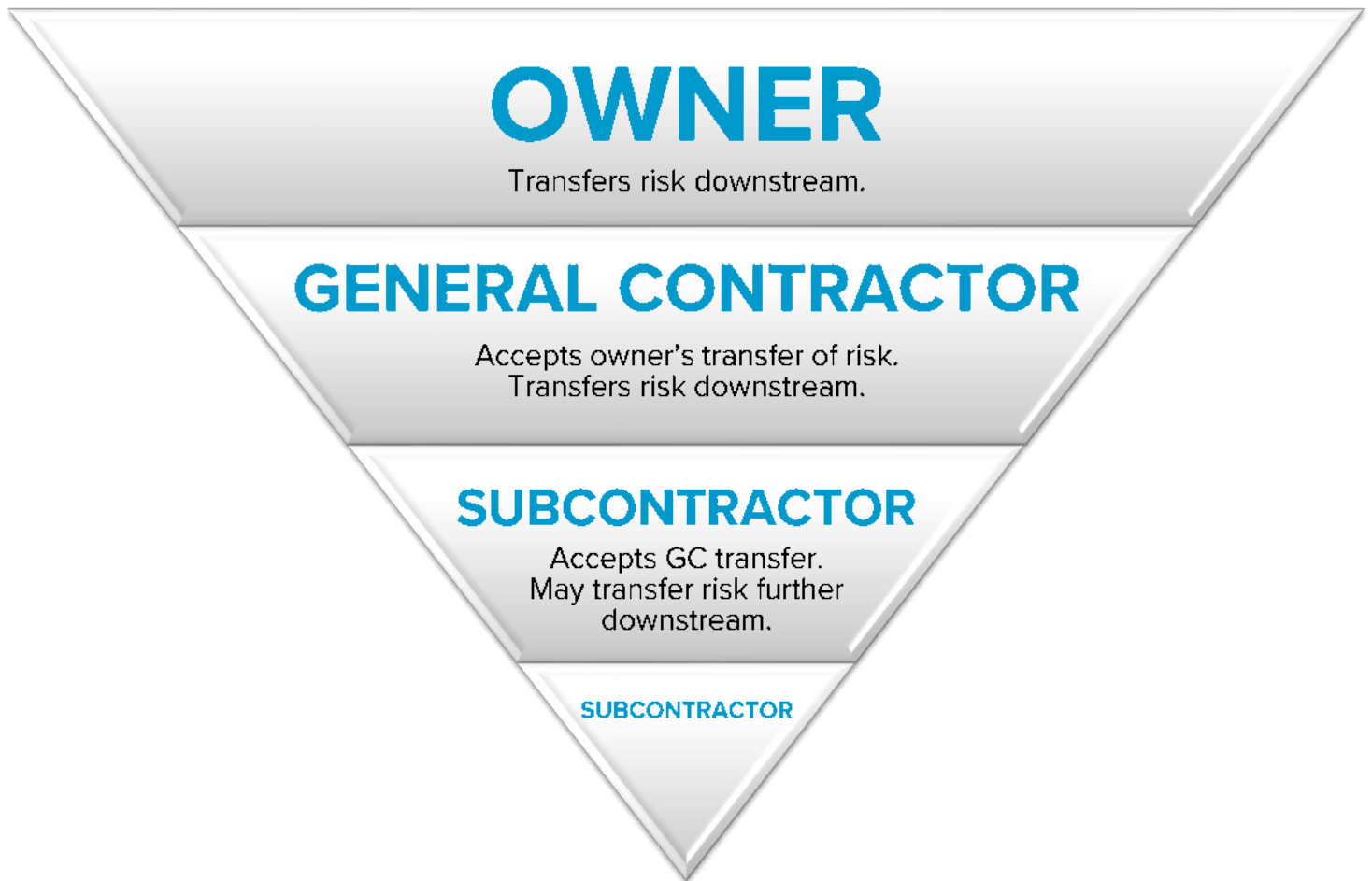
Signature _____

CONSTRUCTION CONTRACT RISK TRANSFER

Construction contracts contain various types of risk transfer between multiple parties involved in a construction project. One of the key types of risk transfer is a transfer of liability found in the indemnification or indemnity section of a construction contract. The ultimate goal of that risk transfer is to place responsibility for job site losses with the party that most directly contributed to the loss.

An important part of any contractor's risk management process is to understand the level of risk being assumed in an indemnification agreement. The chart on the next page is a tool that can help identify and interpret indemnification language (red text) that can define the extent of risk being assumed by downstream parties to a construction contract.

RISK TRANSFER - DOWNSTREAM



Level of Risk Transfer	Key Contract Language	Meaning	Claim Example
Broad	“Subcontractor shall indemnify and hold harmless general contractor for any and all injury or property damage that arises out of its work, including claims for which the general contractor may be, or may be claimed to be, liable. ”	Risk is transferred downstream to subcontractor, including losses that result from the sole negligence of the GC. This level of risk transfer is invalid in most U.S. states.	Jury determined that the GC was 100% responsible for the loss. Per the broad indemnification agreement in the contract between GC and sub, the sub had to pay 100% of the damages.
Intermediate	“Subcontractor shall indemnify and hold harmless general contractor from any and all claims for bodily injury and property damage that may arise from the performance of the subcontract work, and is caused in whole or part by the negligent acts or omissions of the subcontractor. ”	All risk is transferred downstream to subcontractor EXCEPT the sole negligence of the GC. Subcontractor must share in the negligence, but if at all negligent, then GC can transfer its risk downstream.	Jury determined that the GC was 60% responsible for the loss and the sub was 40%. Per the intermediate indemnification agreement in the contract between GC and sub, the sub had to pay 100% of the damages. (GC was not solely negligent, but majority negligence passed down in indemnification agreement.)
Narrow	“Subcontractor shall indemnify and hold harmless general contractor from claims for bodily injury and property damage, but only to the extent caused by the negligent acts or omissions of the subcontractor. ”	The risk transferred downstream is limited to only the damages caused by the fault of the subcontractor.	Jury determined that the GC was 60% responsible for the loss and the sub was 40%. Per the narrow indemnification agreement in the contract between GC and sub, the sub had to pay 40% of the damages (only its share of the negligence).

CHART KEY – PREFACE

INDEMNITY FOR SOLE FAULT PROHIBITED: If “Yes,” the state had either case law or statutory prohibitions against contractual indemnity provisions that allow the sole negligence (no other party negligent) of one contractor (indemnitee) to be passed downstream to another contractor (indemnitor).

Scenario: Indemnitee designs a house wrong and that design is the sole cause of third-party damage.

Language example: “Subcontractor will hold the general contractor harmless and indemnify against any and all claims arising out of or resulting from performance of the work.”

INDEMNITY FOR PARTIAL FAULT PROHIBITED: If “Yes,” the state had either case law or statutory prohibitions against contractual indemnity provisions that allow the partial negligence of one contractor (indemnitee) to be passed downstream to the another contractor (indemnitor).

Scenario: Indemnitee designs a house wrong and that design, along with the indemnitor’s faulty construction, is found the cause of third-party damage. Indemnitee cannot transfer the risk of poor house design to the indemnitor.

Language example: “Subcontractor will hold the general contractor harmless and indemnify against any and all claims if those claims arise out of the indemnitor’s negligence.”

ADDITIONAL INSURED INDEMNITY PROHIBITED: Some states prohibit the transfer of sole negligence in construction contracts, yet allow risk to be transferred from one contractor to another via insurance policies, including additional insured endorsements. If “Yes,” the state prohibits the transfer of sole negligence (from indemnitee to indemnitor) via such insurance mechanisms.

Scenario: Indemnitee designs a house wrong and that design, along with the indemnitor’s faulty construction, is found the cause of third-party damage. Indemnitee cannot transfer the risk of poor house design to the indemnitor via requirement of an additional insured endorsement.

Language Example: “Section II - Who Is an Insured is amended to include as an insured the person or organization (additional insured) shown in the Schedule, but only with respect to liability arising out of your operations.”

STATE	INDEMNITY FOR SOLE FAULT PROHIBITED?	INDEMNITY FOR PARTIAL FAULT PROHIBITED?	ADDITIONAL INSURED INDEMNITY PROHIBITED?	STATUTE
Arizona	Yes, private work No, public work	No, private work Yes, public work	No, private work Yes, public work	AZ ST s 32-1159; AZ ST s 34-226; AZ ST s 41-2586 Exception for all three: Subcontractor (indemnitor) may indemnify person not a party to the construction contract and who, as an accommodation, enters into an agreement with the subcontractor that permits the subcontractor to enter on or adjacent to its property to perform the construction contract for others
Arkansas	Yes	No	No	AR Code §§ 4-56-104; 22-9-214
Colorado	Yes	Yes	No	CO ST s 13-21-111.5; CO ST s 13-50.5-102 Statutes do not apply to breaches of trust and similar fiduciary duties; Statutes also do not apply to property owned or operated by railroads or public districts, or rental agreements
Georgia	Yes	No	Yes	GA Code § 13-8-2 Exception: Anti-indemnity statute shall not apply to any requirement that one party to the contract purchase a project specific insurance policy, including an owner's or contractor's protective insurance, builder's risk insurance, installation coverage, project management protective liability insurance, an owner controlled insurance policy, or a contractor controlled insurance policy; exception also applies to obligations under workers' compensation agreements or other related workers' compensation insurance
Idaho	Yes	No	No	ID ST s 29-114
Illinois	No	Yes	No	740 ILCS 35/1 Not applicable to insurance contracts or agreements, or construction bonds
Indiana	Yes	No	No	IN ST 26-2-5-1 through IN ST 26-2-5-3
Iowa	No	Yes	No	IA ST § 537A.5 Does not apply to any obligation of strict liability otherwise imposed by law
Kansas	No	Yes	No (for additional insured provisions entered into after January 1, 2009)	KS ST s 16-121; see also KS ST s 16-1803 (Effective 7/1/09)
Kentucky	No	Yes	No	KY ST s 371.180
Maine	No	No	No	No provision
Maryland	Yes	No	No	Md. Code Ann., Cts & Jud. Proc. § 5-401

STATE	INDEMNITY FOR SOLE FAULT PROHIBITED?	INDEMNITY FOR PARTIAL FAULT PROHIBITED?	ADDITIONAL INSURED INDEMNITY PROHIBITED?	STATUTE
Michigan	Yes	No	No	MI ST s 691.991
Minnesota	No	Yes	No	MN ST s 337.01; MN ST s 337.02; MN ST s 337.05 Exception: in cases when owner or governmental entity agrees to indemnify for strict liability under environmental laws
Missouri	No	Yes	No	MO ST s 434.100
Montana	No	Yes	Yes, exception project specific insurance	MT ST s 28-2-2111
Nebraska	No	Yes	No	NE ST s 25-21,187
Nevada	Yes, residential construction defect only	Yes, residential construction defect only	No	N.R.S. 40.693 prohibits transfer of controlling parties negligence downstream in wrap-up insurance programs
New Hampshire	No	Yes	No Yes, if engineer, surveyor, architect	NH ST 338-A:1, 338-A:2
New Mexico	No	Yes	Yes	NM ST s 56-7-1
North Dakota	No	No	No	ND ST 9-08-02.1
Ohio	No	Yes	No	OH ST s 2305.31; The leading case on additional insured indemnity is <i>Stickovich v. Cleveland</i> , 757 N.E. 2d 50 (2001)
Oregon	No	Yes	Yes	O.S.A. 30.140; O.R.S. 825.170* *Indemnity prohibition does not apply to lease or rental agreements of real property or personal property, to railroads, or to certain intermodal equipment and agreements
Pennsylvania	No	No	No	PA ST 68 P.S. s 491
South Dakota	Yes, exception architects & engineers	No, only architects & engineers	No	SD ST s 56-3-18; SD ST s 56-3-16
Tennessee	Yes	No	No	TN ST s 62-6-123; <i>Posey v. Union Carbide Corp.</i> , 507 F.Supp. 39
Texas	No	Yes (See comments)	Yes (See comments)	Tex. Ins. Code Ch. § 151. Exception for employee claim § 151.103; Civ. P&R Code § 130.002 only prohibits indemnity of design professionals; Under the express negligence doctrine, the parties seeking to indemnify or exculpate an indemnitee for such consequences must express that intent in specific terms and within the four corners of a contract
Utah	No	Yes	No	UT ST s 13-8-1 Indemnification provisions between owner and construction parties will result in pro-rata proportionate share of fault

STATE	INDEMNITY FOR SOLE FAULT PROHIBITED?	INDEMNITY FOR PARTIAL FAULT PROHIBITED?	ADDITIONAL INSURED INDEMNITY PROHIBITED?	STATUTE
Vermont	No	No	No	No provision
Virginia	Yes	No	No	VA Code s 11-4.1 and 11-4.4
Wisconsin	No	Yes	No	WI ST 895.447 Not applicable to insurance contracts or workers' compensation plans
Wyoming	No	No	No	Exception: An indemnity agreement pertaining to wells for oil and gas is not prohibited by statute except for indemnification of the indemnitee's own negligence; Wyo.Stat.Ann. § 30-1-131; <i>Gainsco Ins. Co. v. Amoco Production Co., 2002.53 P.3d 1051</i>

DISCLAIMERS

This document is not intended to provide a determinative answer as to or whether a particular contract is valid or coverage exists for the Acuity insured. Any party using this guide should consult with experienced construction counsel and examine the specifics of project requirements and not rely on this reference guide solely to meet the requirements of any project or other contractual relationship. The use of its content has significant legal and insurance consequences. The use of its content as anything other than an educational resource, or in lieu of competent professional services and advice from an attorney or insurance professional, may have significant legal or insurance consequences. This educational guide is not intended as a substitute for competent professional services and advice. Consultation with an attorney and an insurance or surety adviser is strongly encouraged.

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PROTECTING YOUR INTERESTS WHEN ENTERING INTO A CONTRACT

Whether your business is using a subcontractor or you are working as the subcontractor, contracts are a fact of life. If you haven't seen or signed a contract yet, it's only a matter of time. It is often difficult to navigate contracts due to legal and insurance industry jargon. Acuity recommends consulting a lawyer when creating or entering into a contract.

Below are some common insurance requirements found in contracts, what they mean to your business, and how they could affect a claim.

ADDITIONAL INSURED STATUS

Additional insured status is of paramount importance and something every general contractor and subcontractor should understand. There are many different additional insured forms because each insurance carrier is unique in what they offer.

When a subcontractor's policy has additional insured coverage, the contract owner (or general contractor) is added as an additional insured on the policy. This allows the insurance to pay out on behalf of the contract owner. This benefits the contract owner, who could be defended by the subcontractor's insurance if the subcontractor is even partially at fault. This is a requirement in most contracts and protects both the subcontractor and general contractor.

PRIMARY AND NONCONTRIBUTORY STATUS

Another common request is to have the subcontractor name the contract owner (general contractor) as an additional insured on a primary and noncontributory basis to their policy. This terminology means the additional insured status applies prior to any other available insurance. It prevents the general contractor's insurance from paying out until the subcontractor's insurance is exhausted.

"Without a clearly defined contractor/subcontractor relationship, jobs can fall apart, claims can be left unpaid, relationships can be ruined, and businesses can be destroyed."

PRODUCTS AND COMPLETED-OPERATIONS COVERAGE

This provides insurance coverage after the subcontractor has completed their work at the job site. Some additional insured forms will only provide ongoing operations coverage for the subcontractor's negligence while on the job site. It is important for the general contractor to request that the subcontractor name them as an additional insured for products and completed operations, because there is still exposure to loss long after the subcontractor has left the job site. It is common for a general contractor to request to be named on the subcontractor's policy for many years after the job is completed.

WAIVERS OF SUBROGATION

When additional insured status is paired with a waiver of subrogation, it is especially effective in transferring risk from the general contractor to the subcontractor. A waiver of subrogation is the subcontractor's insurance carrier agreeing to waive their right to subrogate a claim. In other words, they will not sue the general contractor for compensation, even if the general contractor is at fault.

FINAL THOUGHTS

It is important to remember that when a subcontractor signs a contract, they are legally obligated to the terms and requirements of the contract. The subcontractor should speak with their insurance agent about acquiring required coverages before the job begins. With some of these coverages, the subcontractor's insurance may defend and pay losses for the general contractor whether or not the subcontractor is actually at fault. This is why it is important that a lawyer reviews all contracts.

Without a clearly defined contractor/subcontractor relationship, jobs can fall apart, claims can be left unpaid, relationships can be ruined, and businesses can be destroyed. It is essential that all parties know what they are requesting and what's being requested of them.

PLEASE REFER TO THE SAMPLE CERTIFICATE OF INSURANCE ON PAGE 41.

1. A certificate of insurance is a “snapshot” of the coverages provided at the time the certificate issued. Only the policy forms and endorsements confer coverage.
2. Additional insured and waiver of subrogation are common construction contract insurance requirements. The policy must be reviewed by your insurance agent to be sure the proper endorsements are attached.

3. PRODUCER

Insurance term for the insurance agent who sold the insurance policy.

4. AGENT CONTACT INFORMATION

Producer/agent contact information.

5. INSURER(S) AFFORDING COVERAGE

Indicates which insurance company is providing coverage. It is possible to have a different insurance company for each type of coverage listed.

6. INSURED

The person or organization who purchased the insurance and has the policy in their name.

7. COMMERCIAL GENERAL LIABILITY

- a. A type of insurance that pays for damages arising out of the insured’s premises, operations, products and completed operations, as well as personal injury or an injury brought about by a business advertising its goods or services.
- b. The coverage provided by Acuity is an “occurrence”- type policy, which means that the policy responds to accidental events that occur during the policy period regardless of when the claim is made.
- c. Various limits determine the most we will pay for a loss. They include:
 - i. Each Occurrence. The most we will pay in the event of one occurrence for bodily injury and property damage that arise out of ongoing operations by our insured.
 - ii. Damage to Rented Premises. The most we will pay for damage to a rented premises.
 - iii. Personal and Advertising Injury. The most we will pay for a personal injury or advertising injury offense.
 - iv. Products - Completed Operations Aggregate. The most we will pay for the sum of all damages arising out of a product or an operation that has been completed by our insured.
 - v. General Aggregate. The most we will pay for the sum of all medical expenses, bodily injury, and property damage that arise out of premises liability or ongoing operations by our insured, as well as personal and advertising injury.
 - vi. Medical Expense. The most we will pay for medical expenses because of bodily injury sustained by any one person, even if the insured is not at fault.

8. AUTO LIABILITY

- a. The limits are typically shown as combined single limit, which means that all bodily injury and property damage are subject to that limit. It is also possible to have a limit for bodily injury per person, a maximum bodily injury limit per accident, and a property damage per accident limit.
- b. Although “any auto” is a popular coverage selection, a combination of all owned, hired, and non-owned autos provides equivalent coverage.

9. EXCESS LIABILITY (Higher Liability Limits)

- a. This coverage pays above (or excess of) general liability, auto liability, and employers’ liability coverages.
- b. Excess liability is provided using an “occurrence” coverage trigger.
- c. Coverage uses both each occurrence and aggregate limits.

10. WORKERS’ COMPENSATION

- a. Workers’ compensation includes employers’ liability coverage
- b. Typical employers’ liability limits are:
 - i. \$100,000 per occurrence for bodily injury,
 - ii. \$100,000 per employee for bodily injury by disease, and
 - iii. \$500,000 limit for bodily injury by disease.

11. LIST OTHER LIABILITY COVERAGES HERE

Other liability insurance often includes professional liability.

12. DESCRIPTION

- a. Special instructions or terms of coverage, such as identification of the project, reference to a job number, or other identification of the operations with respect to which the certificate
- b. Exclusions added by endorsement or waivers of subrogation may also be listed.
- c. Individuals or corporations that are required to have additional insured status are usually identified in this box as well. If a contract specifies a particular additional insured form be used, it should also be identified when referencing the additional insured.
- d. This is an example of how these may be shown.

13. CERTIFICATE HOLDER

The person or organization that requested the snapshot of insurance coverage.

14. CANCELLATION

If a notice of cancellation is required, Acuity will attach endorsement IL-7002 to provide that notice (other than non-payment of premium).



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1 THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

2 **IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

3 PRODUCER Acuity Agent 1500 Main Street Sheboygan, WI 53081	4 CONTACT NAME:		
	PHONE (A/C, No, Ext):	920-555-0000	FAX (A/C, No):
	E-MAIL ADDRESS:	ANNE.AGENT@EMAIL.COM	
6 INSURED Super Subcontractors 1600 Main Street Sheboygan, WI 53081	5 INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:	Acuity, A Mutual Insurance Company	14184
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
7 A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			123456789	03/01/2016	03/01/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:						
8 A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS			123456789	03/01/2016	03/01/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
9 A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			123456789	03/01/2016	03/01/2017	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
10 A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			123456789	03/01/2016	03/01/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

11 DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
12 Project: General Contracting, Job No. 1151
General Contracting, Inc, Construction Management, Inc, Owner's Representative, LLC, and New Apartment Building, Ltd are added as an Additional Insured for general liability and excess liability coverage.
Additional Insured provided by ISO form CG-2010(7-04) and CG-2037(7-04)
Primary and noncontributory requirement met using ISO form CG-2001(4-13)

13 CERTIFICATE HOLDER General Contracting, Inc 111 Corporate Drive Any City, WI 50000	14 CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
-----------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

TERM	DEFINITION
Additional Insured Endorsement	Endorsement attached to the commercial general liability policy that provides insured status to another contractor.
Additional Insured Endorsement - Automatic Status	A specific type of additional insured endorsement that grants additional insured status when that status is required in a written contract (typically the subcontractor agreement or construction contract).
Additional Insured Endorsement - Designated Person or Organization	A specific type of additional insured endorsement that grants additional insured status to specific individuals or organizations that are listed on a schedule.
Aggregate Limit	Total limit of insurance that caps the amount of insurance a company will pay for all losses across a policy term.
American Institute of Architects (AIA)	<p>Association of professional architects that serves as the voice of the architecture profession and as a resource for its members.</p> <p>Provides subscription service for various construction industry-approved contract templates that include boilerplate contract language.</p>
Anti-Indemnity Laws	<p>State statutes that essentially ban the transfer of sole negligence from one party of a contract to another.</p> <p>Some states pass specific laws for the construction industry.</p> <p>For a comprehensive directory of anti-indemnity laws by state, refer to page 34.</p>
“Arising Out of Operations”	Indemnification agreement language that, most courts agree, conveys a broad transfer of risk to the downstream party to the contract, including the transfer of sole negligence.
“Caused in Whole or Part By”	<p>Indemnification agreement language that, most courts agree, conveys a more limited transfer of risk because it more directly ties the subcontractors’ actions to the injury or damage.</p> <p>Typically it is assumed that the downstream party to the contract is not assuming the transfer of sole negligence.</p>
Certificate of Insurance	<p>A document identifying that an insurance policy has been written and setting forth the particular types of coverage or limits of coverage that are in force at a particular time.</p> <p>Often used as evidence that certain contractual insurance requirements have been met.</p> <p>A certificate of insurance is not a contract of insurance and does not, in itself, provide a guarantee of coverage.</p>
CG2010 11-85	<p>The first and arguably broadest ISO additional insured endorsement, which provides additional insured coverage for all losses “arising out of operations.”</p> <p>Provides coverage for both ongoing and completed operations.</p> <p>At times, contractors will specify this endorsement as a contract requirement as it conveys broad risk transfer downstream to the subcontractor.</p> <p>Most insurance carriers no longer use this endorsement since many state statutes do not allow broad risk transfer.</p>

TERM	DEFINITION
CG2037 10-01	A specific ISO additional insured endorsement that provides coverage for completed operations. This endorsement was created by ISO because the CG2010 was revised to exclude completed operations, therefore leaving a coverage gap for contractors.
Completed Operations	An exposure to loss that arises out of the contractor's completed work (e.g., a contractor builds a balcony that, after the work is completed, collapses and injures others).
Indemnification Agreement	A component of the construction contract that describes the extent of risk and types of damages that are being assumed by a downstream party to the contract (i.e., subcontractor-indemnitor).
Indemnification Agreement - Broad Form	Broadest form of risk transfer that transfers all risk to include sole negligence to the downstream party to the contract.
Indemnification Agreement - Intermediate Form	Broad form of risk transfer that transfers all risk except sole negligence to the downstream party to the contract.
Indemnification Agreement - Limited Form	Often thought of as a comparative negligence form of risk transfer that transfers nearly all risk to the downstream party to the contract when the injury or damage arises out of the negligent actions of the downstream party to the contract.
Ongoing Operations	An exposure to loss faced by contractors that arises out of the contractor's operations prior to completion (e.g., a contractor is operating a crane and causes injury in the operation of that crane).
Primary & Noncontributory	Construction contract provision that requires the subcontractor's additional insured coverage to apply prior to any other available insurance (e.g., insurance that may be held by the contractor). Additionally, the term "noncontributory" means that the subcontractor's insurance carrier cannot seek contribution toward settlement from the contractor's insurance.
Sole Negligence Liability	Liability that solely rests with only one contractor, with no liability shared among other parties to the construction project. This version of risk transfer, while one-sided, can be seen in some contract indemnification agreements.
Subcontractor Agreement	Title often assigned to a construction contract. Also referred to as a "Contractor-Subcontractor Agreement."
Vicarious Liability	A legal principle that assigns liability for an injury or damage to a person who did not cause the injury but who has a special legal relationship to the person who did act negligently. For example, when a subcontractor causes an injury or damage, the contractor can be held vicariously liable due to the special legal relationship that exists between the parties.
Waiver of Subrogation	Construction contract provision that requires one party (and their insurance carrier) to not pursue recovery of damages from another party in the contract.



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