

A decorative graphic consisting of a green wavy line that starts on the left, loops around, and then extends to the right where it passes behind two white dice. The dice are tilted and show different faces with orange dots. The entire graphic is set against a light gray background.

EBOOK

10 TIPS FOR TRANSFERRING CONTRACTUAL RISK

Is your company rolling the dice when it comes to risk?

THE 10 TIPS YOU MUST KNOW

Does loss prevention feel more like roulette than a real strategy? While you might be on a winning streak, sooner or later, that good fortune will run out. As for odds, one thing is certain: third-party injuries, damages, delays, and defects will happen and when they do, it could mean big losses for your company.

Time to stop relying on luck and start using skill when it comes to risk mitigation. Contractual risk transfer offers a sound loss prevention strategy that places the financial burden for claims and litigation with the parties best able to prevent them – subcontractors, vendors and other third parties. This comprehensive approach establishes contract safeguards that eliminate any gambles when it comes to risk financing and control. Done correctly and the party who creates the problem pays the bill.

Ready to go all-in on a better risk management strategy? In this eBook, learn:

- How contractual risk transfer works
- Strategies for transferring risk using the contract

CONTENTS

- 04 **TIP 1: Indemnity and hold harmless agreements**
- 04 **TIP 2: Waivers of subrogation**
- 05 **TIP 3: Additional insured endorsements**
- 05 **TIP 4: Completed operations**
- 05 **TIP 5: Primaries and non-contributories**
- 06 **TIP 6: Blanket endorsement language**
- 06 **TIP 7: Types of coverage**
- 07 **TIP 8: Coverage limits**
- 07 **TIP 9: The grade**
- 07 **TIP 10: Certificates of insurance**

CONTRACTUAL RISK TRANSFER IN ACTION

No company wants to pay for an issue it did not cause. Yet upper tier entities like property owners and general contractors are particularly vulnerable to claims and losses caused by the work of their subcontractors and other lower tier parties. Without a balanced project agreement, upstream companies hold all the risk and downstream businesses receive the financial rewards. The upper tier has the cards stacked against them. Contractual risk transfer solves this problem by tying losses to the parties most responsible for creating them.

Contracted businesses agree to legal terms that afford upstream companies with liability and financial protections associated with downstream work. The lower tier companies purchase insurance policies that provide financial surety for risks agreed to in the contract. These downstream parties accept the conditions of limited recourse for seeking financial contribution from

upstream entities for claims or losses in which they hold at least some responsibility. This transfer strategy shields upstream parties – despite having responsibility for the overall project or jobsite – from vicarious liability for the actions of their subcontractors. When claims arise, liability follows the terms of the contract. Contractual risk transfer protects upstream parties from the drain of costly claims and motivates downstream parties to operate more responsibly.

Tips for transferring risk

A good risk transfer strategy combines specific clauses with consistent contract management practices that help avoid losses. Hedge your bets against the financial burdens of risk by instituting these 10 contractual risk transfer tactics.



TIP #1

Include an Indemnity and Hold Harmless Agreement

An indemnification and hold harmless agreement represents the core of contractual risk transfer by placing the legal and financial obligation on a lower tier contractor. Under this requirement, the subcontractor agrees to indemnify, or financially restore, the upper tier contractor to its condition prior to a loss or claim. Indemnification also replaces the upstream party as the financial source for legal liability.

The hold harmless clause releases the upper tier contractor from responsibility for the acts performed by its subcontractors, tenants, and other third parties. The clause's provisions minimize litigation risk and allow the upper tier to pursue an indemnity claim in the event of loss or injury. Hold harmless agreement language should state clearly the lower tier's responsibility for claims, damages, losses, expenses, or other cause of action should a problem or dispute arise on a project.

TIP #2

Add a Waiver of Subrogation

Insurance companies use subrogation as a strategy to recoup the money paid for a claim by legally pursuing payment from another party affiliated with the loss. Adding a waiver of subrogation to a contract prevents a subcontractor's insurer or other lower tier party from seeking reimbursement on a settled claim from an upstream entity. Waivers of subrogation provide additional protection to the upper tier and reduce opportunities for litigation between an operation's parties.



TIP #3

Require an **Additional Insured Endorsement**

Additional insured endorsements provide upper tier parties with insurance coverage under a lower tier's liability policy. This coverage amendment prevents subcontractors and other third parties from seeking financial contribution from the upper tier's insurance if a policyholder generates the loss in whole or in part. Additional insureds also can file claims for which they are not solely at fault under the named insured's policy.

TIP #4

Don't Forget **Completed Operations**

Specify the duration of the coverage when requiring an additional insured endorsement. Without a specific requirement, insurers may limit coverage to "ongoing" operations, which only includes the named insured's active work on a project. Extend coverage to finished work by requiring the endorsement include "completed" operations. This is an important distinction because negligence or faulty work often is not discovered for months, or even years, after a subcontractor's job ends. The upper tier foots the bill for the lower tier's poor performance if the additional insured endorsement does not cover completed work.

TIP #5

Specify **Primary and Non-Contributory**

One party is not always solely responsible for a claim. A primary and non-contributory endorsement specifies usage order when multiple policies get triggered by the same event. The clause should state that the subcontractor's policy is primary to the loss without seeking contribution from the additional insured's policy. This ensures the subcontractor's policy applies in full before pursuing any financial contribution upstream.

TIP #6

Beware **Blanket** Endorsement Language

Blanket endorsements provide coverage under a subcontractor or other third party's insurance policy to any contractually required entity without being specifically named. For a subcontractor associated with hundreds of projects a year, a blanket endorsement offers an expedient way for adding additional insureds. One of two conditions must exist for blanket endorsement coverage: 1) a direct contract between the named insured and the additional insured exists, or 2) the contract specifies all parties required as additional insureds. For example, a general contractor's agreement with a subcontractor must state that the property owner be added as an additional insured on the subcontractor's policy since a direct contract does not exist between the property owner and subcontractor.

TIP #7

Detail **Types** of Coverage

Specify the types of insurance coverages required in the contract. Depending on the project and scope of work, this may include Commercial General Liability, Professional Liability, Auto Liability, Workers' Compensation, or Commercial Property, among others. Insurance policies are not onesize- fits-all, so fully covering a project or property likely requires multiple policies. A major paint spill covered under a Contractor's Pollution Liability policy may not receive coverage under Commercial General Liability, which could leave the upper tier entity responsible for the clean-up costs rather than the subcontractor.



TIP #8

Set Coverage Limits

Designate required coverage thresholds for each policy. The coverage amount required by the contract should equal or exceed the upper tier's insurance limits. This may require that the lower tier purchase an umbrella policy to bridge any financial gaps. When a subcontractor or other third party fails to have an ample coverage amount, the upper tier is forced to pay out-of-pocket costs or use its own insurance policy for the financial overage in the event of a loss.

TIP #9

Make the Grade Matter

Insurance in name only is no good. Far too many insurance companies lack the financial solvency for covering major claims and losses. When that happens, the upper tier pays the price even when they bear no fault for the incident. Who a lower tier's insurance provider is matters. Contractually require that subcontractors' insurers hold an A- or better rating by AM Best, a toptier credit rating agency for the insurance industry.

TIP #10

Review and Retain Certificates of Insurance

Certificates of Insurance (COIs) confirm that subcontractors, vendors and other service providers carry the insurance required for working on a project. Request and review a COI from every third party before work begins. Verify coverages, limits, and other insurance specifications required by the contract. As a best practice, review COIs monthly for active coverage. Maintain copies of COIs and signed contracts. In the event of a claim, insurers will verify contractual obligations when assessing their responsibility for addressing a loss.

AGREEMENT LANGUAGE MATTERS

Schedule time with your legal counsel for a contract review. Ensure your company fully leverages the power of risk transfer before the next project. Preventing losses comes from the power of the contract – make sure yours plays to win.

Still have questions? myCOI can help.

ABOUT MYCOI

Ready to operate from a better loss prevention blueprint? It's time to add myCOI to your company's toolbox. Through an intuitive platform built on insurance industry logic, myCOI keeps construction firms and their projects protected. Our clients benefit from comprehensive COI tracking, compliance, and risk reporting with little more than a few clicks. Automated processes and system integrations offer end-to-end workflow efficiencies that stop noncompliance in its tracks. A group of insurance industry experts serve as an extension of the team ensuring no missed detail. The cloud-based software means construction managers can take the platform anywhere—from the basement to the boardroom and beyond the top floor.

**You manage the jobsite.
Let myCOI manage the risk.**

For more information or to schedule a free demo visit mycoitracking.com/request-a-demo or call (317) 759-9426.

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