Project Name:

Project Description:

Project Number:

Contract Value:

FRA#:

Owner/Contractor:

Joint Venture:  Yes  No

If answered “yes” above, describe insured’s portion of work for JV:

|  |  |
| --- | --- |
| Check All That Apply |  |
| INDEMNIFICATION PROVISIONS | |
|  | **Comments** |
| Broad Form Basis (Includes sole negligence of other party) |  |
| Intermediate Form Basis (Joint negligence) |  |
| Limited Form Basis (Indemnitor’s own negligence) |  |
| Kotecki  Sample wording: In addition, Subcontractor agrees to waive any protection it may be afforded under any statute, law, ordinance or common law theory that limits an employer's common law or other liability to the amount of Workers' Compensation benefits it has paid or will pay to or on behalf of its employee. | In some states, third parties held liable for a work-related injury may seek contribution from the injured worker's employer, but such contribution may be capped by the amount of applicable workers compensation benefits. This cap is named for an Illinois case—*Kotecki v. Cyclops Welding Corp.,* 146 Ill. 2d 155, 166 Ill. Dec. 1, 585 N.E.2d 1023 (1991)—that first imposed it. If the employer has indemnified the negligent third party, that indemnity agreement may be viewed in certain jurisdictions as a waiver of the Kotecki cap. You will need to make sure your insurance company will insure for this as you are waiving a way a right. They will endorse the CGL or WC policy. |
| Indemnification inside of insurance requirements | Sometimes contracts have indemnification wording into some of the insurance requirements. Please note that this can put a burden on your client (and us) that we can’t insure for. Typically you will see this in professional liability, environmental/pollution and sometimes waiver of subrogation. If you see this please consult with another party internally to discuss and advise client. |
| **GENERAL REQUIREMENTS** | |
|  | **Comments** |
| Pass through clause to subcontractors | If this is in the contract, the client must pass the same insurance requirements to any subcontractors they hire. This clause may be in the insurance section or in another part of the contract. |
| Certificates needed prior to project start | This is a typical requirement to see. |
| Endorsements needed prior to project start | This is a typical requirement to see. |
| Can satisfy limits with combination of primary and excess policies |  |
| 30-Day Notice of Cancellation and Non-Renewal   * Note who needs to be notified; keep track of this for carrier | Many contracts will also state that Indemnitor needs notification of ***reduction in limits***, material changes in the policy, and restrictions in coverage. Carriers will not typically agree to this as it is not easily monitored. Anything other than “days’ notice” we should be having client strike from contract and if they cannot strike then we make sure they understand we, and the carrier, are not monitoring for this. |
| Insured is responsible for tracking insurance certificates of subcontractors |  |
| Notification of erosion of limits | It is fairly typical to see this requirement in Professional Liability. Sometimes we see it on all lines of coverage. We always point this out to the client. Suggest they strike this language from the contract, but let them know that this is an obligation they would have to monitor. We are not. |
| Severability of Interests | Have this stricken from the contract. If it cannot be stricken you need to see if the carrier will remove any cross suits exclusions from ALL policies of coverage requested. If they will not remove, client needs to be told of and explained the exposure. |
| Other requirements |  |
| INSURANCE REQUIREMENTS | |
| **Commercial General Liability** | **Comments** |
| $ Each Occurrence |  |
| $ General Aggregate | Are the client’s limits adequate? |
| $ Products/Completed Operations Aggregate |  |
| $ Damage to Rented Premises Each Occurrence |  |
| $ Personal & Advertising Injury |  |
| $ Medical Expenses any one person |  |
| Per project general aggregate |  |
| Per location general aggregate |  |
| Additional Insured status  Form number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Edition date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Is the AI requirement for ongoing and completed operations coverage?  Make sure the edition dates for ongoing and completed operations coverage match. If one is asking for an edition date with sole negligence and the other is not there is a gap in coverage. Seek clarification.  Does contract ask for endorsement that is different than what is on the policy? Read form to see if coverage is equivalent in language & intent. If it is not, seek permission from the carrier to add the endorsement requested.  Who is to be added as an additional insured? Will the endorsement you have on the policy cover all those parties? Do you need to get a specific endorsement for a specific entity? For example, we are often asked to name the A&E firm as an AI. You may need to add a specific AI form for the A&E on the policy for ongoing operations to apply to the AI. Most A&E firms don’t need completed operations as they don’t have an exposure. Suggest to the client that they strike language naming the A&E as an additional insured for completed operations. If they won’t you need to have a conversation with your carrier about the exposure and how to cover. |
| Continuing completed operations coverage; \_\_\_\_\_Years | Make sure that any reference to maintaining insurance in the contract matches. Sometimes we see “three years” and then later in the contract you see statute. If there is ambiguity point it out, ask for clarification and inform your client.  As a reminder, when you renew your policy and have reviewed contracts asking for specific additional insured endorsements you need to make sure at renewal the carrier doesn’t add a new (more limiting) endorsement onto the policy without first addressing how the older AI obligations will be handled. This could put our clients in breach of contract. |
| Coverage to exhaust vertically through all subcontractors’ coverage before applying to Indemnitors coverage | See Primary and Non-Contributing below. Essentially these are the same. The intent is for the Subcontractors coverage (all of it) to apply first exhausting everything before the General Contractors (or Owners) comes into play. |
| Coverage to apply primary and non-contributing | See above. |
| Waiver of subrogation  Indemnitee (owner or contractor)  Others (A&E, CM, etc.) | Who needs to get the waiver? Check policy for waiver language make sure it is broader than just Indemnitee. Sometimes it is not. There are states where this is not legal to provide. |
| EPLI coverage |  |
| XCU included or Coverage for explosion, collapse & underground | This is a coverage that is typically included in a CGL form. It is standard in an ISO form. However, some carriers can/will exclude for this. This is why it is still often requested. |
| Limited Pollution Liability to allow for BI or PD caused by heat, smoke or fumes from hostile fire, etc. |  |
| Bodily injury, personal injury and property damage that arises out of pollutants brought on site | Does the client need pollution liability? |
| Contractual Liability for Personal Injury | Many CGL insureds have no significant contractual liability exposure for personal and advertising injury, but some types of business are regularly called upon to indemnify other parties for certain personal and advertising injury offenses. Examples of such businesses are private security firms and **general contractors**, both of which may be required contractually to hold their clients harmless for false arrest or wrongful detention claims brought against the client as a result of security services provided by the insured. (In the case of construction projects, job site security—especially after hours when work is not going on—may be provided by general contractors as part of their contractual agreement with the project owner.) To provide **limited coverage** you can add [CG 22 74 10 01](https://www.silverplume.com/SPOnline/SPSage.aspx?cmd=search&tpc=Ins%2FQuick%20Links&lvl=1&qrye=%3B%20(sub%3D%22Topic%20IRMI%22)&etfs=Bt7QANS8b7iZc%2BlP2DOeeA&ac=on&sbtag=International%20Risk%20Management%20Institute%20Manuals&isCompany=False&qry=cg%2022%2074) |
| No contractual liability limitation | Discuss in class. |
| Contractual liability for railroads | Contractual indemnification of a railroad does not meet the definition of an “insured contract”. When the named insured is required to execute a hold harmless agreement in favor of the railroad, either with respect to work performed for the railroad or projects for third parties that require operations on or adjacent to the railroad property, a CGL must be modified in order to have coverage for this contractual liability. [CG 24 17 10 01](https://www.silverplume.com/SPOnline/SPSage.aspx?cmd=link&qry=(f%3DIRM01139%20or%20k%3DIRM01139)#jd_cg_21_39_contractual_liability_limitation). Is there a need for railroad protective liability too? |
| No exclusion for work performed by subcontractors | Most often this is removed in a policy by amending the exception to exclusion l in a CGL form. Sometimes you will see a specific endorsement. |
| No exclusion for residential work |  |
| Limited Professional Liability via ISO CG 2280 |  |
| Full Professional Liability (see Professional Liability Section) | See professional liability section |
| Excess & DIC of Wrap-Up | If the primary coverage for the construction project is covered by a Wrap-Up (OCIP, CCIP) you could see this as a request. More than likely you will not have this on your policy and you will have to notify your client to strike this from the contract and have a conversation with your carrier about how to comply, or not. |
| Other Requirements |  |
| **Workers Compensation** |  |
| Employers Liability Limits: |  |
| $ BI by Accident | Are client’s limits adequate? |
| $ BI by Disease/Policy |  |
| $ BI by Disease/Employee |  |
| Alternate Employer Endorsement | Labor issues are abundant in construction. Many firms are leasing employees. You may see this request do to this exposure. If your client doesn’t lease labor have this stricken from the contract. If they do you should already have this on your policy. If you don’t, add it. |
| USL&H Coverage (Longshoreman’s Harbor Workers Act) | Whenever you see federal requirements specifically or on an “if any” basis, ask questions. You need to assess the need for appropriate coverage and respond to your client directly regarding such requirements to the contract. |
| Maritime Coverage |  |
| Jones Act (Defense Based Act Coverage) | Is project located on a military base? |
| Outer Continental Shelf Lands Act |  |
| Voluntary Compensation |  |
| Stop Gap – Employers Liability | Is project in a Monopolistic State? If yes, need. Plus WC insurance must be purchased from the State Fund and you need to discuss this with your client. |
| Waiver of subrogation  Indemnitee (owner or contractor)  Others (A&E, CM, etc.) | Who needs to get the waiver? Check policy for waiver language make sure it is broader than just Indemnitee. Sometimes it is not. There are states where this is not legal to provide. |
| Coverage Required for Sole Proprietors | If you see this requirement, a discussion should be had with client about their exposure. Yes, sole proprietors can exclude themselves from coverage, but this is a big exposure to a GC. The general may require coverage. |
| Other requirements |  |
| **Automobile Liability Coverage** | **Comments** |
| Any Auto  Owned Auto  Non-Owned Auto  Hired Auto |  |
| $ Combined Single Limit, each accident |  |
| Additional Insured | Typically included in the CA 0001 form; however, Indemnitors like to see this coverage. You may need to get a specific endorsement to share with them. |
| Coverage applies primary and non-contributing | Same discussion as in CGL section |
| Waiver of subrogation  Indemnitee (owner or contractor)  Others (A&E, CM, etc.) | Who needs to get the waiver? Check policy for waiver language make sure it is broader than just Indemnitee. Sometimes it is not. There are states where this is not legal to provide. |
| Broadened pollution liability coverage (CA9948) | Does job entail hauling hazardous waste as part of scope of work? Is contractor fulfilling this job or subcontractor? If yes, has scope/coverage been passed through to subcontractor? |
| MCS-90 if required by law | Does job entail hauling hazardous waste as part of scope of work? Is contractor fulfilling this job or subcontractor? If yes, has scope/coverage been passed through to subcontractor? |
| **Umbrella/Excess Liability** | **Comments** |
| $ Each Occurrence | You will often see a statement that ALL COVERAGES have to follow form of the primary. This includes additional insured, primary and non-contributing, waiver of subrogation, etc. Make sure the coverage wording follows form. Most umbrella carriers are adapting to additional insured endorsements of 04 13 edition date and these are not as broad as what is being asked for specifically in the primary coverage. |
| Additional Insured | Does it follow form? |
| Primary and Non-Contributing | Does if follow form? |
| Waiver of Subrogation  Indemnitee  Others | Does it follow form? |
| Per Project Aggregate | Does it follow form? |
| Per Location Aggregate | Does it follow form? |
| Drop Down Provision Required |  |
| Other Requirements |  |
| **Owners & Contractors Protective Liability** | **Comments** |
| $ Each Occurrence | If this is in a requirement in addition to everything else, seek clarification. An OCP policy does not include completed operations coverage. If completed operations coverage is required you will need to get this stricken from the contract and go with CGL language. If completed operations is not required then you do not need a CGL and this coverage. Umbrella/Excess policies will not follow form of an OCP. You will need to get the OCP limit in the total liability limit requested. |
| Other Requirements |  |
| **Railroad Protective Liability** | **Comments** |
| $ Each Occurrence | You may need to obtain the data sheet to get information on the activity of the track or an FRA# to look up information. |
| Other Requirements |  |
| **Contractors Pollution Liability** | **Comments** |
| Claims made $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each claim |  |
| Occurrence $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each occurrence |  |
| Minimum Deductible Required? \_\_\_\_\_\_\_\_\_\_\_\_\_Deductible amount |  |
| Retroactive date shall not be later than the start date of the agreement |  |
| Extended Reporting Period If Claims Made \_\_\_\_\_\_\_\_\_ Years |  |
| Coverage for work performed on site |  |
| Coverage for transport of hazardous materials |  |
| Coverage for disposal of hazardous materials |  |
| Coverage for cleanup costs |  |
| Coverage for natural resource damage |  |
| Coverage for microbial matter/fungus, including Legionella pneumophilia |  |
| Virus, Bacteria, Airborne Pathogens |  |
| Silt |  |
| Sedimentation |  |
| Other requirements: List them out |  |
| Additional insured requirement |  |
| **Builders Risk** | **Comments** |
| Owner is providing the builders risk | ***Use IRMI Builders Risk Checklist to build out submission for quote.*** |
| Contractor is providing the builders risk |  |
| Included all contractors, owner and subcontractors as additional named insureds |  |
| $ \_\_\_\_\_\_\_\_ Completed Value or  $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Contract Value or  Something else | What is the policy to be covered at? Read the contract to understand what is to be required of the builders risk for covered property, covered locations, covered causes of loss, terrorism provisions, limits of insurance (including specific for some of the covered property and locations), deductibles, details of coverage, delay in completion (this is really important to a contractor), and other provisions like named insured, subrogation, termination of coverage, occupancy clause and cancellation. **At this time use IRMI’s Builders Risk Checklist to review the contract.** |
| **Contractors Equipment** | **Comment** |
| Coverage for owned equipment |  |
| Coverage for leased equipment |  |
| Coverage for tools |  |
| Covered for borrowed equipment | Common to ask for this. Contractors borrow equipment from each other all the time. The contractor that borrows and damages will be responsible for loss but may not have coverage unless endorsed as Borrowed equipment. |
| Specific requirements |  |
|  |  |
| **Contractors Professional Liability** | **Comment** |
| Claims made $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each claim |  |
| Occurrence $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ each occurrence |  |
| Minimum Deductible Required? \_\_\_\_\_\_\_\_\_\_\_\_\_Ded. Amount |  |
| Claims Made or Occurrence Requirement |  |
| Retroactive Date Shall Not Be Later Than The Start Date of the Agreement |  |
| Extended Reporting Period If Claims Made \_\_\_\_\_\_\_\_\_ Years |  |
| Other Requirements |  |
| **Crane/Rigging** | **Comment** |
| Specific requirements |  |
| **Cyber Liability** | **Comment** |
| Specific requirements | Note: List any specific requirements |
| **Drone/Unmanned Aerial Vehicle Coverage** | **Comment** |
| Specific requirements | Note: List any specific requirements |
|  |  |