

Required Insurance Language for PRF Construction Contracts

When working with legal counsel to affect a construction contract for new construction or for build-outs the Purdue Risk Management Department requires the following language to be imbedded in applicable contracts. The following language is designed to foster a simple cut and paste approach in adding to or inserting into a construction contract.

General Conditions Applying to Insurance

All insurance procured must be from an insurance company possessing a minimum A.M. Best's Insurance Guide rating of A VII. All insurance shall be purchased from and maintained with insurance company(ies) lawfully authorized to do business in the jurisdiction in which the Project is located.

Owner reserves the right to approve the security of the insurance coverage provided by the Insurance Company(ies) terms, conditions, and the Certificate of Insurance. Failure of the Contractor to fully comply with these requirements during the term of the Contract will be considered a material breach of contract and will be cause for immediate termination of the Contract at the option of *Owner*.

The insurance required by this Agreement shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

All Contractor insurance policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance carried by *Owner*.

All Contractor policies shall be endorsed to include The Trustees of Purdue University and Purdue University (if the project and contract is under Purdue University) as an additional insured (Additional Insured Endorsement CG 2010 11 85 edition or equivalent required). If the contract is under PRF then Purdue Research Foundation should be listed as the additional insured.

All Contractor policies must include a Waiver of Subrogation Clause in favor of *Owner*.

Contractor's policies may not be non-renewed, cancelled or materially changed or altered unless thirty (30) days advance written notice via certified mail is provided to *Owner*.

Contractor must provide a renewal certificate to *Owner* no more than 15 days after renewal.

Evidence of insurance coverage will need to be supplied to *Owner* at least 30 days prior to the start of Project. Evidence of insurance shall be supplied on a standard ACORD Certificate of Insurance form. All insurance requirements must be indicated on said form.

Insurance Pertaining to Owner/PRF

Owner will maintain the following insurance and limits during the course of Project:

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| Commercial General Liability | \$2,000,000 |
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| Auto Liability | \$1,000,000 |
| Workers' Compensation | Statutory limits |

Insurance on Building While Under Construction/Builders Risk Coverage

Owner shall purchase and maintain, in a company(ies) lawfully authorized to do business in the jurisdiction in which the project is located, builder's risk or new construction insurance in the amount of the initial Contract Amount plus values of subsequent modifications, change orders and loss of materials supplied or installed by others comprising the value of the entire project at the site on a replacement cost basis. Such insurance shall be maintained, unless otherwise provided in the Contract or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has insurable interest in the property to be covered, whichever is earlier. The insurance shall include interests of Owner and General Contractor as interest may appear in the project.

Contractor shall separately insure or be wholly responsible for all materials destined to become a part of the completed structure when such materials are stored away from the site of the work. Such insurance shall include the interest of Owner and shall be subject to review and inspection by Owner.

Contractor shall separately insure or be wholly responsible for all Contractor's equipment, tools, scaffolding, staging, towers, forms and temporary buildings, owned, borrowed, or rented by Contractor and Subcontractors, and all materials and supplies which are not intended to become a part of the project. Evidence of such coverage will be supplied to Owner.

The insurance shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests.

Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured equipment during installation.

Regardless of any deductible retained by the Owner as to physical damage to the building, Contractor will be responsible for the first \$0.00 of any property loss on a per occurrence basis, until the building is complete.

Insurance Pertaining to Contractor

Contractor shall obtain and maintain the minimum insurance coverage set forth below. By requiring such minimum insurance, *Owner* shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under the contract. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The insurance coverage stated below does not replace any surety bonds as required by contract.

Commercial General Liability – ISO form CG0001 or its equivalent form providing equivalent liability coverage. Coverage to include:

- A. Premises and Operations
- B. Personal Injury/Advertising Injury
- C. Products/Completed Operations
- D. Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract)
- E. Independent Contractors

Automobile Liability including all

- A. Owned Vehicles
- B. Leased Vehicles
- C. Hired Vehicles
- D. Non-Owned and Employee Non-Owned Vehicles
- E. Personal Injury Protection (where applicable)

Workers' Compensation and Employers' Liability

Workers' Compensation (Coverage A) and Employers Liability (Coverage B)

Professional Liability (Including Design Build Errors and Omissions) – When operations or activities under the contract involve any type of design work, professional liability coverage shall be maintained by Contractor covering wrongful acts, errors or omissions of Contractor.

Contractors' Pollution Liability Owner requires this coverage whenever work at issue under this Contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's scope of services. Policy shall cover the Contractor's completed operations.

Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.

This coverage can be obtained through the Contractor's Commercial General Liability policy by including the Limited Pollution Liability Extension ISO endorsement CG 2415 or its equivalent.

If the contractor is responsible for the transport of any hazardous waste, the Contractor can extend the Pollution Liability Policy to cover this exposure or the Contractor can add to the Business Automobile Policy by adding ISO endorsement CA 9948 and MCS-90.

Limits Required

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|---|-------------|
| Commercial General Liability (CGL) | |
| General Aggregate (per project) | \$2,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| Each Occurrence Limit | \$1,000,000 |

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| Personal/Advertising Injury | \$1,000,000 |
| Fire Damage (any one fire) | \$100,000 |
| Medical Payments (any one person) | \$5,000 |
| Auto Liability | |
| Bodily Injury/Property Damage (each accident) | \$1,000,000 |
| Personal Injury Protection, if applicable | Statutory |
| Worker's Compensation | |
| | Statutory |
| Coverage A (workers' compensation) | \$500,000 |
| Coverage B (employers liability) | \$500,000/500,000/500,000 |
| Professional Liability (if required) | |
| Each Occurrence/Incident/Claim | \$1,000,000 |
| Aggregate | \$2,000,000 |
| Owner requires Contractor to keep this policy in effect after completion of the project for two years post project | |
| Pollution Liability (if required) | |
| Per Loss | \$1,000,000 |
| Aggregate | \$1,000,000 |
| Owner requires Contractor to keep this policy in effect after completion of the project for two years post project | |

Additional Requirement Pertaining to Contractor Coverage Above

Commercial General Liability (CGL)

CGL must include coverage for liability arising from products-completed operations and liability assumed under an insured contract.

If the CGL insurance has a general aggregate limit then ISO endorsement CG2503 (05/09 Edition) or its equivalent must be added. The Designated Construction Project(s) General Aggregate Limit must be maintained for the duration of the agreement and the limit must be twice the minimum required occurrence limit.

The CGL policy shall contain no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or damage to the work.

Business Automobile

Business Automobile must be endorsed to include contractual liability coverage if it is not automatically included within the form.

Contractors' Pollution Liability

The Contractors Pollution Policy shall be endorsed to include the following as Additional Insureds: The Owner and its board, officers, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations

Workers' Compensation

Workers' Compensation policy must include NCCI endorsement WC000313 Waiver of Our Right to Recover from Others endorsement in favor of *Owner* and it's board, officers, employees, agents, and volunteers

If there is an exposure of injury to Contractors employees under the U.S. Longshore and Harborworkers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. The U.S. Longshore and Harborworkers Compensation Act coverage is provided by NCCI endorsement WC000106A and the Maritime Coverages are provided by NCCO endorsement WC000201A.

Other Noteworthy Material for the Preparer of Contracts

PRF does not generally name others as additional insured on its policies of insurance. If any contract has this language it should be negotiated out. An exception to this situation would be builders risk coverage. PRF's builders risk policy states with the policy the following, "The insurance shall include interests of owner and general contractor as interest may appear in the project."

Generally speaking PRF, does not agree to indemnify others contractually. If a contract must include an indemnification agreement, such agreement must be reviewed by legal counsel and approved by Risk Management.

For projects valued over \$1 million the last paragraph of the section listed as **Insurance on Building While Under Construction/Builders Risk Coverage** should be changed to reflect the Contractor is responsible for the first \$25,000 of any property loss occurring on the worksite or to the building under construction

In regards to insurance limits required by the Contractor: on projects valued at \$1 million or less the standard limits indicated above can be inserted in the construction contract. On projects over \$1 million in value the following enhanced limits should be inserted in the Limits Required section of the contract:

Limits Required

Commercial General Liability (CGL)

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|---|-------------|
| General Aggregate (per project) | \$5,000,000 |
| Products/Completed Operations Aggregate | \$5,000,000 |
| Each Occurrence Limit | \$5,000,000 |
| Personal/Advertisizing Injury | \$5,000,000 |
| Fire Damage (any one fire) | \$100,000 |
| Medical Payments (any one person) | \$5,000 |

Auto Liability

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|---|-------------|
| Bodily Injury/Property Damage (each accident) | \$1,000,000 |
| Personal Injury Protection, if applicable | Statutory |

Worker's Compensation

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|------------------------------------|---------------------------|
| Coverage A (workers' compensation) | Statutory |
| Coverage B (employers liability) | \$500,000/500,000/500,000 |

Professional Liability (if required)

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|--------------------------------|-------------|
| Each Occurrence/Incident/Claim | \$1,000,000 |
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| Aggregate | \$2,000,000 |
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Owner requires Contractor to keep this policy in effect after completion of the project for two years post project

Pollution Liability (if required)

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| Per Loss | \$1,000,000 |
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|-----------|-------------|
| Aggregate | \$1,000,000 |
|-----------|-------------|

Owner requires Contractor to keep this policy in effect after completion of the project for two years post project