

# Contractual risk transfer

## What is contractual risk transfer?

In simple terms, it's the strategic use of contract obligations—like indemnity and exculpatory agreements, waiver of recovery rights, and insurance requirements—to shift the risk burden to others, sparing oneself from potential losses.

- **Indemnity agreement:** A contractual agreement where the “downstream” contractor agrees to indemnify the “upstream” contractor. The “downstream” contractor assumes liability on a broad, intermediate, or limited basis.
- **Exculpatory agreement:** An agreement in a contract where one party absolves the other of liability arising from the contract (e.g., a disclaimer).

General contractors often rely on subcontractors in daily operations. If a contractor oversees a subcontractor, they're ultimately responsible for any resulting bodily injury and property damage.

### Key provisions for an acceptable risk transfer agreement:

When creating a risk transfer agreement, we recommend consulting an attorney, as laws and regulations vary by state. Below are the essential elements to include:

1. **Clearly identify all parties:** Specify the project in the contract or through an addendum or purchase order.
2. **Indemnification clause:** Include language that indemnifies, defends, and holds harmless the contractor, owner, and others involved. Ensure subcontractors' employees and lower-tier subs are explicitly covered.
3. **Certificate of insurance requirements**
  - **Commercial general liability**
    - The subcontractor's policy must name the contractor, owner, and any required parties as additional insureds
    - Coverage must include ongoing operations and completed operations, equivalent to ISO forms CG 20 10 and CG 20 37
    - Insurance should apply on a primary basis



- **Coverage limits**

- General aggregate: \$2,000,000
- Products/completed operations aggregate: \$2,000,000
- Personal and advertising injury: \$1,000,000
- Each occurrence: \$1,000,000

- **Automobile limits**

- Bodily injury (per person): \$1,000,000
- Bodily injury (per accident): \$1,000,000
- Property damage: \$1,000,000
- Combined single limit (bodily injury/property damage): \$1,000,000

- **Workers' compensation and employers' liability**

- Provide coverage at statutory limits

4. **Define jobsite safety responsibilities:** Outline responsibilities, including site clean-up

## Real-life scenarios

Explore the practical side of contractual risk transfer with these illustrative examples showing how it can effectively safeguard contractors:\*

- **Without risk transfer:** A general contractor hires a masonry contractor for exterior brickwork on a home. During construction, the masonry contractor's scaffold collapses, causing injuries to multiple workers. Since no contract was in place, the burden falls on the general contractor's workers' compensation policy to pay benefits.
- **With risk transfer:** A plumbing contractor tackles a substantial project involving multiple apartment buildings. To expedite work, the plumbing contractor subcontracts a segment to a local independent contractor. Unfortunately, the independent contractor uses faulty piping, resulting in a burst pipe and extensive flooding post-completion. Fortunately, the plumbing contractor had a risk transfer agreement and proof of insurance from the independent contractor, allowing the plumbing contractor's insurance company to seamlessly shift the claim to the independent contractor's carrier.

\*These hypothetical examples are provided for illustrative purposes only.

