

# Contractual Risk Transfer



## What Is Contractual Risk Transfer?

**Contractual Risk Transfer**—The use of contractual obligations such as indemnity and exculpatory agreements, waivers of recovery rights, and insurance requirements to pass along to others what would otherwise be one's own risk of loss. - International Risk Management Institute

**Indemnity Agreement**—An agreement in a contract where the “downstream” contractor agrees to indemnify the “upstream” contractor, with the “downstream” contractor assuming liability on a broad, intermediate or limited basis.

**Exculpatory Agreement**—An agreement in a contract where one party relieves the other party of liability resulting from the execution of a contract. An example of this would be a disclaimer.

General contractors extensively use subcontractors in their daily operations. Trade contractors will also on occasion use the services of subcontractors. If a contractor oversees the operations of a subcontractor, they are ultimately responsible for the bodily injury and property damage that results from that work.

## What Are the 8 Provisions of an Acceptable Risk Transfer Agreement?

EMC recommends you consult an attorney as laws and regulations differ by state. The following are recommended minimum provisions to include in a contract.

1. Parties to contract listed with project specifically named
2. Contract requires certificate of insurance
3. Hold harmless, defense and indemnification language present
4. Jobsite safety responsibilities including clean-up
5. Contractual indemnification explicitly includes all claims of the subcontractor's or sub subcontractors' employees
6. Additional insured status covering ongoing operations and completed operations on a primary and/or noncontributing basis
7. Insurance requirements and limits:
  - General liability:
    - ▶ \$1,000,000 occurrence
    - ▶ \$2,000,000 premises operations
    - ▶ \$2,000,000 products completed operations
  - Workers' compensation: Statutory limits
8. The contract requires that the subcontractor's policy does not contain a coverage exclusion or restriction for:
  - Subcontractor's work
  - Claims for indemnification arising out of injury to the insured's employees
  - Claims for bodily injury sustained by the insured's non-employees



## Contractual Risk Transfer In Action

Here are a couple of examples of how contractual risk transfer can help protect contractors:\*

A general contractor hires a masonry contractor to apply brick to the outside of a home. In the process of construction, the masonry contractor's scaffold collapses and injures several workers. The general contractor's workers' compensation policy is ordered to pay workers' compensation benefits since no contract was in place.

A plumbing contractor has a large job plumbing several apartment buildings. Instead of hiring a new employee for the job, the plumbing contractor subcontracts a portion of the job to a local independent contractor. The independent contractor uses faulty piping in one of the apartment buildings. After the job is complete, a pipe bursts and floods several floors. Luckily, the plumbing contractor had secured a proper risk transfer agreement from the independent contractor along with proof of insurance. The plumbing contractor's insurance company was able to tender the claim to the independent contractor's carrier.

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

## Contact Us

EMC Insurance Companies  
717 Mulberry Street  
Des Moines, IA 50309

800-447-2295 • 515-280-2511  
[emcins.com/contractors](http://emcins.com/contractors)



INDEPENDENT  
INSURANCE AGENTS