



GENLIB

SPECIALISED INSURANCE & INNOVATIVE SOLUTIONS
FOR BROKERS
FSP 35482

CONTRACTORS ALL RISK & CONSTRUCTION INDUSTRY PUBLIC LIABILITY (CIPL)

Insurer: New National Assurance Company

FSP No. 2603

This brochure is an informative document and is always superseded by the specific Policy Wording

THE 5 “C’s

In order to underwrite any insurance risk, the following points should be considered.

1. **Client** – an understanding of the client’s business and how the business is conducted is essential to providing the correct cover. e.g. if contractor’s plant is insured, the Insured could hire plant in or hire plant out. Similarly, considering annual contract works risks, it would be important to know the maximum duration and value of contracts and furthermore whether they undertake contracts which are excluded under open annual policies.
2. **Contract** – this would relate to the policy wording and other contracts which determine the Insured’s risk, such as a plant hire agreement or a construction contract.
3. **Capacity** – Insurers acceptance of risk is limited to the maximum losses which they can pay. A contract with a value exceeding say R1,000,000,000 or a plant item with a value of R100,000,000 may necessitate placing cover on a co-insurance basis
4. **Claims History** – the Insured’s previous loss history affects the policy terms
5. **Cost** – i.e. premium

Material Facts:-

All factors which can result in greater than normal or increased frequency of claims are deemed to be material to the acceptance of the risk.

SECTION 1: CONTRACTORS ALL RISK

Engineering insurance is frequently dependent on the conditions of contract which determine the obligations of the insured parties.

The Plant Hire companies use various agreements which incorporate the terms of hire and the obligations of the hirer which may make them liable for any liability arising out of the use of the plant and loss or damage to the hired-in plant.

Similarly, any construction or engineering business is regulated by the construction conditions of contract. Various standard documents are used, such as Joint Building Conditions of Contract

(JBCC/Principal Building Agreement), General Conditions of Contract (GCC), FIDIC & NEC to name the most common ones.

The Conditions determine the responsibility for loss or damage to the works, obligations to insure and when risk transfers (upon Practical Completion or Works Completion), maintenance period obligations and so forth.

The General terms of the contract can be amended and/or specified in the **Contract Data** which is completed and signed by the contracting parties.

The **Letter of Award** also often confirms the basis of the contract.

Obtaining the above information ensures that the correct policy is arranged.



Contract Works

The policy can be issued to cover a specific contract or project, where insurance is arranged by the Employer/Main Contractor or for all contracts awarded to a contractor of a similar type and value under an annually renewable policy.

The standard annual policy excludes:-

- Contracts where the estimated value at award (including the cost of free issue materials) exceeds the Policy Limit of Indemnity or Insured Contract Value or Maximum Value per Contract reflected in the Schedule
- Contracts with a duration at inception which exceeds the limit in the policy Schedule
- Contracts on an existing airport runway or airstrip or in or on any aircraft unless otherwise agreed.
- Contracts in or on waterborne vessels
- Contracts involving harbours, jetties, piers, wharfs, breakwater, moles, groynes, dams including coffer dams and other temporary works in the sea, rivers or dams.
- Contracts involving underground mining, tunnelling, shaft-sinking, underground work or any underground activity other than excavations for normal foundations or basements
- Contracts which commenced prior to inception of the Policy unless agreed to by endorsement.

Storm, Flood, Rain, other Water damage

Windstorm

Accidental Damage

Theft & Malicious Damage

Earthquake

The construction risk policy provides cover for the insurable risks of loss or damage to the property insured (the materials and works in progress) which will result in financial losses for a contractor who is responsible to rectify such damage in terms of the construction contract.

This includes elemental perils, natural disasters such as flood, theft, fire, negligence resulting in damage and the consequences of defective workmanship.

Note. The contractor is deemed to be qualified to produce the works for which it has tendered and therefore remains responsible to rectify defects.

Flooding could relate to overland flow and in a water course, where the level and flow rate vary with rainfall in a catchment area. The measures that the contractor takes to mitigate damage to the works affects the risk to insurers and hence, the premium.

The risk of damage due to subsidence would be managed by considering the geotechnical conditions and adapting the method of working, e.g. propping the sides of trenches or stabilising the material with cement or lime to obtain compaction.

Accidental damage is generally due to negligent handling of materials and the risk can be minimised by a safety plan as required in terms of the OHS Act and suitable supervision on site.

Fire, Explosion

Testing & Commissioning

Subsidence & Collapse

The **fire** risk can also be managed by clearing combustible debris daily, having hot-work procedures in place, restricting smoking on site, securing flammable liquids in a locked compartment and so forth.

Theft is a major risk but can be managed by enclosing the site, controlling access to the site, employing qualified security guards, ensuring that the building can be securely enclosed before installing high value fittings and ensuring that the responsible employees, such as foremen, are trustworthy.

Testing and commissioning is a relatively high risk during the installation of electrical or mechanical machinery and must be done in accordance with a written procedure, allowing the technician or engineer to tick all the boxes and perform all tests safely. E.g. if you operate a machine it is necessary to ensure that lubrication or cooling systems are fully functional before operating the machine.

The contract documentation includes a section relating to the **Scope of the Works** – this section provides additional information about the contract to the Insurer and if provided at underwriting stage, reduces the risk of non-disclosure.

EXTENSIONS TO STANDARD COVER

Surrounding Property Damage

Removal of Debris

Claims preparation costs

“Surrounding Property” is existing property which is handed to the contractor for work thereon and does not extend to all the Employer/Principal/Client’s property – in other words, an electrical distribution board may be handed to an electrician to replace a switch and is therefore in their control but the fridge in the kitchen is third party property. Similarly a waterproofing contractor may have custody and control of a roof but the building below is deemed to be third party property.

When a building is vacated and handed over to a contractor for renovations and alterations, the contractor may be contractually responsible for any loss or damage, including due to external perils such as storm and flood. The building may also be insured under a commercial or homeowners’ policy but may exclude loss or damage caused by the contractor.

The JBCC conditions generally provide that the property owner is responsible for insuring the existing property and the contract works, where the work entails renovation, alteration and also where the works is handed over in phases.

Claims Preparation Cost is not a typical construction extension and more applicable to Business Interruption claims where auditors may have to be appointed; the Insured must prove that construction claims fall within the policy cover at his own cost.

Offsite Storage

Fire Brigade Charges

Professional Fees

Offsite Storage cover is provided for finished products or material which will be incorporated into the works but cannot be stored on site; such goods is generally considered as **Material on Site (MOS)** and the contractor is paid for the such material the value of which is included in the **Interim Payment Certificate**. The off-site storage facility must be secure against theft, malicious damage, fire and must be suitable for the type of material being stored, e.g. sensitive equipment may have to be stored in a controlled environment.

The **Professional Fees** extension relates to professional fees incurred by the employer when the engineer is instructed to perform a professional function during the rectification of damage in respect of which costs had already been incurred excluding the cost of redesign. An example is where the engineer had already signed off on the reinforcing steel in a suspended slab which subsequently fails due to the concrete contractor's failure to distribute the concrete during the pour. The concentration of weight results in a failure of the formwork and the slab collapses. The engineer would have to repeat his inspection once the formwork has been set up again and steel placed per the design.

THE MAIN EXCLUSIONS

- **Losses falling within the policy deductible**
- **Contracts excluded in terms of the Contract Value and period limitation stated in the policy**
- **Defective Design, Plan, Specification or Workmanship**
- **Lateral support risks**
- **Losses by theft or disappearance which cannot be identified with a specific event**
- **Consequential loss and Advanced Loss of Profit/Project Delay/ Penalties for delay etc.**
- **Continuous dewatering of the contract site due to the ingress of naturally occurring ground water**
- **Off-Shore & Waterside risks, Harbours, Jetties, Tunnelling, Shaft sinking, underground mining**
- **Contracts involving Prototype or untried design**
- **Contracts exceeding 36 months period**
- **Loss or Damage due to inherent ground conditions such as Dolomite areas**

There are several different types of insurance policy exclusions:-

1. Exclusions relating to trade risks such as defective workmanship or materials
2. Exclusions in respect of risks which can be more specifically insured, such as defective design
3. Exclusions of risks where public opinion plays a role, such as a duty to pay penalties for a failure to comply with statutes
4. Exclusions relating to inevitable losses, such as where the Insured did not appoint a qualified foreman to supervise the adequacy of the work
5. Exclusions relating to losses which cannot be identified with a specific event, such as ongoing pilferage which relates to inadequate control over stock and a lack of security – which leads to inevitable loss
6. Uninsurable risks are excluded, e.g. the cost of additional work which didn't form part of the original scope or prototype installations
7. Exclusions relating to risks which can be covered only if additional premium is paid, such as loss of refrigerant and operating media.

GENERAL CONSIDERATIONS – C.A.R.

CONTRACT VALUE - It should be established if this is inclusive of VAT and Free Issue Material.

ANNUAL TURNOVER – In the case of an Annual Open CAR/EAR Policy the estimated annual turnover is the total of all contract work anticipated to be commenced in the year of insurance. Incl. Free Issue & VAT

The Contractor's contract works policy sum insured must include the contract value **and the value of materials supplied by the employer**, including the value of property transported and positioned, VAT included.

Ideally, to ensure that free issue material is included in the sum insured, it should be specifically noted by endorsement against every contract where material is provided by the employer.

The Employer's contract works policy sum insured would include the contractor's contract value, the professional fees relating to supervision, the value of material supplied to the contractor for transport or work thereon, VAT included. The professional fees relating to design and the value of the ground where the project is undertaken would not be included in the sum insured but the value of existing property (such as a building which is not occupied) which is handed over to the contractor could be included as "free issue" material.

The conditions of contract (contract data) often specifies for what value the contract works and liability risks must be insured and is also often incorrect, requiring a limit rather than a sum insured – cover must always be arranged based on contract value as detailed above. The conditions often also provide an indication of which extensions of cover is required.

MAINTENANCE – (LATENT DEFECTS) The cover will normally provide a maintenance period commencing immediately on completion and hand over of the contract. This will vary from contract to contract according to the contract conditions however the maximum is 24 months.

RISK SURVEY – Some risks may need to be seen before a quotation is given e.g., building of a house on a steep slope or near water. The nature of the site may need consideration e.g., geological characteristics and history or evidence of subsidence or landslip. Is the site in a built-up area, near railways or busy roads

The Contract Documents include various sections, such as:-

- **Contract** drawings and specifications
- Contract Scope of Works
- Priced bill of quantities
- **Construction** programme
- Project quality management plan
- Risk Matrix (which party is responsible for every task or risk)
- Project health and safety plan
- Conditions of **contract**

Other relevant documents will include the geotechnical and hydrology reports and certain tasks may require specific instructions which are conveyed by a method statement drafted by the engineer.

It is important to review the contract documents to ensure that the correct cover is arranged. As an example, a contractor may have a contract to refurbish a stacker reclaimer or ship loader. In some cases the equipment may only have to be insured as Existing Property in the custody and control of the contractor but if the contract involves moving the item the sum insured should be increased to include the value of the item which now becomes “free issue” rather than surrounding property.

NON-STANDARD CONSTRUCTION - Buildings with Thatch roofs, Timber buildings require special consideration as regards site management, lightning protection, firefighting equipment, storage of the thatching materials, rates and deductibles. These Risks need to be underwritten specifically

REMOVAL OF LATERAL SUPPORT - excavations for example basements present risks of removal of support to surrounding own and third party property and consequently these risks need careful consideration involving a site survey and in some cases the advice of a professional engineer & a Geotechnical Report

PERIOD OF INSURANCE EXTENSION – the project may not be complete by the expiry date shown on the policy and the Insured will request an extension. This may be granted at appropriate additional terms. Considerations such as the length of period required to completion, the type of season that the extension will run into, i.e., wet and rainy or dry will affect the underwriter's views on additional terms

The broker must ensure that the Insured understand the policy limitations and that the contractor understands that it must declare certain contracts.

An annual policy excludes some types of contract (such as work in water) but also has a maximum contract limit and a contract period limit. Contracts with a greater value or duration than allowed in the policy are deemed to be uninsured.

The expiry of a project specific/once-off policy must be diarised and the Insured must be asked to confirm if the contract was completed as planned or whether cover should be extended.

The insured must be made aware that any circumstances which could result in a material change in risk must be declared; these include:-

- Increases in the contract value which could affect acceptance of the risk by the Insurer
- Changes in the scope of works which include activities which are different to the insured risk, i.e. a road contract which is extended to include a bridge over a river
- Where commencement of the contract is postponed, and earthworks then doesn't happen during the dry season as planned but after the rainy season starts

SECTION 2: CONSTRUCTION INDUSTRY PUBLIC LIABILITY

Section 2 – Public Liability Provides cover for loss or damage to Third Party property or injury or death occurring as a direct result of the construction work covered under Section 1

The construction policy liability sections provides specific cover for liability arising out of the performance of a construction contract i.e.

- At the contract site
- During the contract period when the contractor is on site
- Arising out of the performance of the insured contract

Cover is limited to **accidental** damage to third party property and injury to third party persons. The employer can be deemed to be a third party if it isn't a party to the Insurance policy, such as when a plumber is called in to replace a geyser and then allows water to damage the house owners' wooden floors due to negligence;

The so-called "broad form" liability policy is wider than both the Contractor's liability and Commercial General liability policies. Some differences are:-

- Loss or damage doesn't have to be accidental in nature
- Cover may extend wide of construction activities, i.e. for other business activities associated with construction and even operational risks which are not insured under a construction liability policy
- Cover can extend to Products liability and Defective Workmanship with higher limits than available under the General Liability policy

The Policy provides cover for : **EMERGENCY MEDICAL EXPENSES. LEGAL DEFENCE COSTS**

Provided that such costs are incurred as a direct result of an indemnifiable event under this section of the policy

The injured party, i.e. third party who suffered loss or damage to its property or is injured must prove that the contractor was negligent. The Insured must be advised to **never admit liability**, even if the circumstances seem to indicate that they are responsible. All the requirements to prove a claim are not always present.

Furthermore, the Insured must advise the Insurer of any incident which could result in a claim.

The requirements for a claim in delict to succeed includes all the following:-

- harm sustained by the third party;
- conduct on the part of the Insured (including employees) which is wrongful;
- a causal connection between the conduct and the plaintiff's harm; and
- fault or blameworthiness on the part of the defendant.

The policy will not respond in respect of all successful claim in delict as the injury or damage must be accidental. If the Insured was reckless or deliberately caused the damage it would be liable for all costs and would not be indemnified by the Insurer.