

You Signed What?

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A. What to Look for in Common Contracts/Agreements

1. Insurance Requirements

- Contractual obligation to provide certain types of coverage, specific limits of liability and other endorsements
- Insurance requirements outline policy provisions and certificate provisions which must be the same

2. Indemnity Provisions/Hold Harmless Agreements

- **Basic** – Assume responsibility for the negligence of your customer
- **Intermediate** – Assume responsibility for the joint negligence of the owner and your customer
- **Broad** – Assume responsibility for the sole negligence of the owner

Broad

Contractor agrees to hold Owner and their agent(s) harmless against any and all suits alleging personal injury or property damage and defend against same, regardless of their merit, **including suits alleging the sole negligence of the Owner**

3. Requirements that Require Property Insurance

- These requirements create insurable interest but may go unnoticed by many insureds
- Some insureds may mistakenly think their current policies provide automatic coverage

B. Coverage in the General Liability Policy for Indemnity Agreements

- Coverage is provided as an exception to an exclusion
- The only agreements covered are those found in the definition of an “insured contract”

Definition of Insured Contract

- a. A **contract for a lease of premises**. However, that portion...that indemnifies any person for damage by fire to a premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”
- b. A **sidetrack agreement**
- c. Any **easement or license agreement**, except in connection with construction or demolition operations within 50 feet of a railroad
- d. An **obligation, as required by ordinance to indemnify a municipality**, except in connection with work for a municipality
- e. An **elevator maintenance agreement**
- f. That part of any other contract or agreement pertaining to your business ...**under which you assume the tort liability of another party** to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement...

D. Lease of Premises



1. Indemnity Provision & Insurance Requirement

8. INDEMNIFICATION BY TENANT: LIABILITY INSURANCE

- A. Landlord shall not be liable to Tenant or to any other person for any damage to any person or property **caused by any act, omission, or neglect of any employee, agent, customer or visitor of Tenant. Tenant agrees to indemnify and hold Landlord harmless** from any such liability. In addition, Tenant shall, during the term of this Lease, maintain comprehensive public liability insurance, issued by a reputable insurance company, licensed to transact business in the State of Texas, with limits of not less than five hundred thousand dollars (\$500,000.00)...,which insurance shall protect Landlord and Tenant against liability for any accident, injury or damage on the premises or the Property.

Examples:

- Visitor to IIAT falls and sues Landlord
- Employee of IIAT is injured when ceiling falls in and sues Landlord

2. Property Insurance Requirement

- C. Tenant agrees to maintain, at Tenant's own expense, **property damage insurance (fire, etc.) in sufficient amounts to cover the building occupied by the Tenant located on the Premises described in this Lease.** Tenant agrees to hold Landlord harmless for all claims for loss, damage, cost or expense in connection with such property resulting from fire, casualty or other occurrence of Tenant's business.

- Leases may require coverage for **improvements and betterments** or for damage to **building glass**, or other specific components such as air conditioning systems

E. Office Equipment Lease

1. If the Lease requires Insurance...

Insurance. Lessee shall procure and **continuously maintain and pay for all risk insurance against loss of and damage to the Equipment** for not less than **the full replacement value of the Equipment**, naming Lessor as loss payee, and liability and property damage insurance with limits as approved by Lessor, naming Lessor as additionally named insured and a loss payee.

...It is automatically covered as Business Personal Property

Your Business Personal Property...

(7) Leased personal property for which **you have a contractual obligation to insure**, unless otherwise provided for under Personal Property of Others

2. If Insurance is **NOT** Required...

Loss and Damage. Lessee hereby assumes and shall bear the entire risk of loss and damage to the Equipment **from any and every cause whatsoever**...In the event of loss or damage of any kind whatever to the Equipment, **Lessee shall, at Lessor's option:**

- Place the same in good repair, condition and working order; or
- Replace the same with like equipment in good repair, condition and working order; or
- Pay to Lessor the replacement cost of the Equipment.

...it should be insured as Property of Others (1.c.) on the Business and Personal Property Coverage Form

- For replacement cost, the Replacement Cost option must apply to business personal property and the Declarations must also show that Replacement Cost applies to Property of Others
- For Agreed Value, use the Leased Property endorsement **CP 14 60**

F. Mobile Equipment Lease



1. Indemnification Provision

Other Indemnification. You understand that we have no control over your use of the equipment, and in any event, for the amount of rent we are charging we cannot agree to accept any financial, liability or other risks relating to the use or ownership of the equipment. Accordingly, **you agree to hold us harmless, indemnify (pay or reimburse) and defend us against all claims, liabilities, losses, suits, proceedings, damages, costs (including reasonable legal fees) relating to this Lease or to the use or ownership of the equipment,**

2. Insurance Requirement and Property Insurance

Damage to Equipment; Risk of Loss of Equipment; Insurance. You agree that **we are not liable or responsible for any damage to the equipment, or any loss of or casualty to the equipment from any cause whatsoever.** NO SUCH DAMAGE, CASUALTY OR LOSS WILL AFFECT YOUR RESPONSIBILITIES AND OBLIGATIONS UNDER THE LEASE. **You agree to keep insurance on the equipment insuring against all risks of property damage, casualty or loss in an amount at least equal to the replacement cost. You agree to list us as the “loss payee” with respect to such insurance. At our option we may also require you to have public liability insurance listing us as “additional insured”.**

G. Auto Rental Agreements

1. Most Rental Agreements Make Renter Responsible for:

- Damage to the Vehicle
- Loss of Rental Income
- Administrative Fees
- Diminished Value

Auto Rental Insurance The Renter hereby agrees that he shall **fully indemnify** the Owner for **any and all loss of or damage to the vehicle or equipment** during the term of this Agreement whether caused by collision, fire, flood, vandalism, theft or any other cause, except that which shall be determined to be caused by a fault or defect of the vehicle or equipment.

Renter also agrees to **indemnify Owner for any loss of rental income** resulting from damage to the vehicle which occurs during the term of this agreement. **Renter will also indemnify Owner for any loss of value in the vehicle** resulting from damage which occurs during the term of this agreement.

2. ISO Business Auto Policy covers:

- Damage to the vehicle subject to the deductible
- Loss of Rental income (\$20/day up to \$600)

H. Sample Construction Contract

- A. Contractor will provide to Owner **(30) days advance notice of any change**, non-renewal or cancellation of insurance coverage
- B. Said insurance certificates will give evidenced of Workers' Compensation insurance in accordance with the statutory requirements of the State of Texas
- C. Said insurance certificates and endorsements will give evidence of both Contractor's **comprehensive** general liability and auto liability insurance stating expiration dates and limits as specified below.
- (1) Minimum Limits of Liability Coverage. The insurance provided herein **shall afford to Owner** liability coverage in the following minimum amounts:
- i. Comprehensive Automobile Liability including Non-Owned and Hired with **Bodily Injury Limits \$2,000,000 and Property Damage Limits \$2,000,000 and**
 - ii. Contractor's Comprehensive General liability Bodily Injury Limits \$2,000,000 and Property Damage Limits \$2,000,000 (Combined Bodily Injury and Property Damage Limits \$2,000,000 **and endorsed for contractual liability**).

I. Important Questions to Ask Customers

1. Lease of Premises

- Does your lease require you to insure any property?
- Does it include a joint waiver of subrogation?

2. Office Equipment Lease

- Are you required to carry insurance?
- Do you have to pay a specific amount if the equipment is damaged?

3. Mobile Equipment Lease

- What liability insurance requirements exist?
- Do you have to pay a specific amount if the equipment is damaged?

4. Auto Rental Agreements

- What do you expect your auto policy to cover?