

No surprises with the right cover

The many types of insurance policies available to contractors can be confusing. In knowing your responsibilities and needs and choosing policies that suit, you could remove nasty surprises when things go wrong.

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ALL CONTRACTORS will agree that there is nothing more damaging to a project or to the contractor's business than to have something unexpected occur, causing loss or delay. Specialist construction insurance policies exist in New Zealand to cover the risk of the unexpected occurring so that there are no surprises.

Standard contracts require insurance

Building and development is a large financial undertaking. Insurance helps protect this investment for owners and contractors and meet the legal requirements of the construction contracts in place. Contractors, particularly, also look to insurance for cover against design risks and liabilities.

Standard form contracts in New Zealand, such as NZS 3910:2003, NZS 3910:2013 and NZS 3915:2005, expressly require insurance. These place the responsibility to insure with the contractor. A principal or owner can insure under the special conditions.

The insurance required by these contracts relates to the contractor's obligations under the contract. It includes contract works, construction machinery, public liability, motor liability and professional indemnity insurance where the contractor is responsible for design.

This allows for risk allocation and risk management between the contracting parties for certain events. There are always risks that a principal or owner does not want to retain, and it will pass these on to the contractor. Essentially, insurance means that there are no surprises.

Two key types of policies

Broadly speaking, there are two key types of insurance policies - indemnity policies and contingency policies:

- Under indemnity policies, the insurer promises to indemnify the insured against particular losses. Examples include damage or destruction to property, liability including general and professional negligence, fidelity, business interruption and mortgagee's interest insurance.
- Under contingency policies, the insurer promises to pay the insured a specific sum on the happening of an event. Examples of this type of policy include life or disability insurance.

Many types of construction insurance

There are many different types of construction insurance policies, covering items such as:

- protection from financial loss due to property damage at a construction site
- cover for loss of rents or profit if the project is delayed by damage to insured property
- cover for loss of income and stock deterioration if plant and machinery breaks down.

In New Zealand, insurers offer a range of types of policies specific to construction activities:

- Contract works - provides protection during construction and during a defects liability/maintenance period. It does not include

liability cover. There are two types. One is a single-project policy ideal for one-off projects including houses and office blocks or for civil purposes such as roads and bridges. The other is an annual policy intended to provide protection to contractors carrying out a number of projects throughout the year.

- Domestic contract works and liability - ideal for renovations to private property. It includes liability cover and can be taken out by the owner or contractor.
- Erection all risks - intended to cover the risk of loss arising from erecting and installing machinery or plant and the associated testing and commissioning phases.
- Advanced consequential loss - intended for large contracts where completion on time is critical. It protects from a loss of gross profit if the project is delayed due to loss or damage at the construction site to property covered by contract works insurance.
- Contractor's plant and machinery/mobile plant - provides protection for plant and machinery used on a construction site from most accidental or malicious damage. This could cover a site hut to a tower crane and usually includes hired and borrowed plant.
- Machinery breakdown - protection for owners who rely on machinery day to day. It ensures they have funds for repairs or replacing machinery. It may cover accidental loss caused by mechanical failures to insured machinery.

When is a claim covered?

For a claim to be covered:

- the particular loss must be covered by the policy – the loss must fall within the insuring clause in the policy and not in any exclusions
- the insured must have complied with any conditions or warranties within the policy - a breach may result in cover being declined.

It is unusual for a contractor to be compelled to obtain specific insurance for defects due to bad workmanship or unsatisfactory materials.

A contractor has an ongoing responsibility to fix defects during the life of the contract and any defects liability and maintenance period. Procuring specific insurance to cover against all defects is rare, as the cost of premiums is prohibitive.

Some things not covered

Specialist construction insurance doesn't cover:

- liquidated damages
- delay costs, other than expediting expenses
- acts of war, terrorism or nuclear events
- aviation or marine liability, as this requires special policies.

Many policies have specific conditions, warranties or exclusions depending on the type of construction work and the type of insurance policy chosen. It is important to make sure that a contractor has the correct policy for the work undertaken.

Again, having insurance in place should mean that there are no surprises. ◀