

Insurance for Civil Liability in the Construction Sector

In previous articles in our series on construction insurance, we discussed the mandatory policies: on the one hand, to [cover the ten-year liability](#), and on the other, to [insure the professional liability of construction service providers](#).

Even where there is no obligation to take out insurance, liability can still be insured. We will first discuss Operations Liability insurance and then the Post-Completion/Post-Works Liability policy.

OPERATIONS / BUSINESS LIABILITY

1. FAULT BY THE INSURED – THIRD-PARTY DAMAGE

The Public Liability insurance policy, also known as Operations Liability or Business Liability insurance, is intended to compensate for loss suffered by a third party as a result of a fault on the part of the insured.

Each word is important in this context.

This is a liability insurance policy. The insurer will only compensate for the damage if it is caused by a fault of its insured. The usual requirements of fault, damage, and causation must be met.

Only non-contractual liability is covered. It requires a contravention of a statutory provision or the general duty of care. A mere breach of contract does not suffice.

The insurer only covers the liability of its insured for damage caused to a third party. This refers to a party who is not covered by the policy. This could indeed involve another party at the worksite.

For example, if materials fall onto the client's vehicle or onto the equipment of another contractor due to the insured's careless behaviour, the damage to the vehicle and the equipment is covered.

Liability arising from contracts is typically not covered.

Damage suffered by a subcontractor due to a breach of a contractual provision by the main contractor, which does not constitute a violation of the general duty of care, is therefore not covered.

Any extension of coverage that goes beyond legal liability for non-contractual damage must be taken out separately.

2. Extensions

It is possible to extend the coverage of the insurance.

A typical extension provides that a **contractual** breach is insured when it also involves a non-contractual fault. For example, a contractor uses materials that are not suitable for the task. This is in breach of the contract but also contrary to the conduct of a reasonable and prudent contractor.

A further typical extension is the '**entrusted goods**' provision.

Entrusted property refers to goods made available to the contractor for work or use as materials, for example, equipment that needs to be installed.

The contractor is required to protect entrusted goods from damage and hand them back upon completion of the work. This constitutes contractual liability and is thus generally excluded. Extending the policy to cover potential damage to entrusted property is advisable. Attention must be paid to whether all entrusted property is covered or only the entrusted property that is specifically described. Another point to consider is whether every type of damage is included in the policy. Theft is often excluded.

Liability for neighbour nuisance is a no-fault liability that, in principle, does not concern the contractor. The client can, however, contractually require the contractor to assume this liability. In effect, this amounts to a contractual indemnity from the client. The contractor may insure against such claims through a separate policy extension.

A contractor may also decide to cover the **extra-contractual liability of their subcontractors**. Prior to the law change on 1 January 2025, the client could claim against the contractor for subcontractor mistakes that were contractual breaches, but not for extra-contractual faults. This policy extension addresses this issue. Following the law change on 1 January 2025, the client now has a direct extra-contractual claim against the subcontractor, making this extension likely to gain significance.

3. Loss

The loss that is compensated includes bodily injury, material loss, and non-material consequential loss (e.g., loss of use). Contractually agreed penalties for delay, damages, and the like are typically excluded.

4. Exclusions.

The liability policy does not cover risks already insured under compulsory insurance, such as motor vehicle insurance.

When a standard All-Risks Construction policy is combined with an Operations Liability policy, any damage covered under the All-Risks Construction policy will be excluded from the Operations Liability coverage.

When an Operations Liability policy is combined with a Post-Completion Liability policy, any damage covered under one policy will be excluded from the other.

This series does not include a discussion on the precedence between the different policies that may be invoked in the event of a claim.

Checking the exclusions listed in the policy is advisable. This includes, among others, the exclusions discussed in our previous article.

POST-COMPLETION / POST-WORKS LIABILITY

1. Coverage

The coverage provided by the Operations Liability policy ends when the works are completed.

However, even after the completion of the works, the construction parties can still be held liable for any damage.

This liability can be insured through a POST-COMPLETION/POST-WORKS LIABILITY policy.

This is likewise a liability insurance policy.

A contractor who has poorly executed the works commits a fault for which they are liable, even if the fault is only discovered after the completion of the works.

A key distinction from the Operations Liability policy is that it covers both contractual and extra-contractual damage.

Within the context of Post-Completion Liability, 'poorly executed works' can also refer to works that are carried out according to professional standards but not in accordance with the contract, provided that this results in damage. Damage caused by a water barrier that was correctly installed but where the architect had specified a different design is therefore covered.

However, coverage for contractual damage is limited to consequential loss.

Damage to the building resulting from the installation of the water barrier contrary to the architect's instructions is covered. The installation of a new water barrier, as originally specified, is not covered.

2. Loss

Physical injury is covered.

Coverage for material damage includes both the client's property and that of third parties. Immaterial damage is insured if it results in consequential loss.

3. Exclusions

In the case of contractual liability, coverage is limited to consequential loss. The costs of repair, replacement, or improvement are never covered.

Since this is a liability arising after acceptance of the works, damage is only covered if it results from a latent defect. Loss resulting from defects that were visible at the time of handover is therefore not covered.

Exclusions for delay penalties, damages, and similar contractual amounts are usually included in this policy too.

For the contractor, the insured works are always limited to the works actually carried out.

Construction service providers can be held responsible for mistakes in the design and related matters through their professional liability coverage. For more details, see our previous article.

The OPERATIONS LIABILITY and POST-COMPLETION LIABILITY policies are frequently sold together as a combined policy, offering significant protection to the insured.

As always: read the small print and seek assistance if necessary.

In the following article, we will focus on All-Risks Construction insurance.

Does it live up to your expectations?

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Real estate