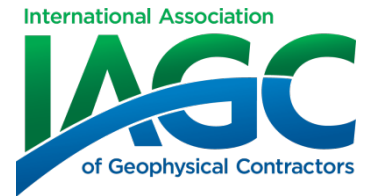


# Statement of Principles

## Insurance



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This document includes the Statement of Principles, a description of the issues (with examples) and contractual language.

## Statement of Principles

Key Words:

- Client
- Company Group
- Contract
- Contractor
- Tender
- Third Party(ies)

The objective of insurance is to ensure that the liability/indemnity provisions accepted by a party will be fulfilled if property damage or bodily injury occurs. Insurance clauses are not and should not be regarded as a means of shifting risk. The fact that a **Contractor** may have obtained beneficial insurance coverage should not be used as a reason for shifting risk to the **Contractor**. As such, the liability clauses and the insurance clauses in a **Contract** must be dealt with as two distinct and separate items. The insurance clauses should never allocate liability and the liability clauses should never base the allocation of liability on the existence of insurance.

Terms that are in bold type are defined in the Glossary of Terms which forms part of this family of Statements of Principles.

All **Contracts** should ensure that:

1. The liability and indemnity clauses allocate the exposure to risk in a manner reflective of the relative risk-reward received by both the **Contractor** and the **Client** and without regard to the existence of insurance.
2. Once the allocation of risk is defined in the liability and indemnity clauses, the insurance clauses define what minimum insurances are required by the **Client** and **Contractor** to ensure that each party can cover the risks assumed under the **Contract**.

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## Commercial Context

Often the **Client** will attempt to shift additional risk onto the Geophysical **Contractor** by arguing that, as the cost of insurance is included in the day rate, the **Contractor** should accept any risk or liability covered by their insurance. In the alternative, the **Client** will argue that the **Contractor** should assume additional risk because they can acquire additional insurances to cover the assumed risk and simply pass on the cost to the **Client**. The cost of **Contractor** Insurance programs does not take into account this additional and un-priced assumption of risk. As the terms and conditions in **Client Tender** documents attempt to shift more and more additional risk exposure onto the **Contractor**, many of the loss and risk exposures shifted to the **Contractor** are immeasurable and are often uninsurable or under insured. As such, they expose the **Contractor**, the **Client** and potentially **Third Parties** to unmanaged or uncertain risk of loss.

When arguing that the **Contractor** should accept greater risk or liability because it is covered by insurance whose cost is already included in the day rate, the **Client** will often propose to qualify their indemnity clauses by stating that the **Client** will indemnify **Contractor** against certain losses:

**“but only to the extent not covered under Contractor’s insurance”**

Such language can cancel out the proper risk-reward allocation achieved under the indemnity section. Risk allocation should not be contingent on the existence of insurance protections because: (a) insurance coverage can vary during the term of a **Contract**; (b) insurance does not diminish the likelihood of the risk but merely transfers the financial exposure; and (c) the presence of insurance does not offer a guaranteed hedge against financial exposure as the claim may be excluded, vitiated or disputed by the underwriter or fall within any insurance excess. The risk of loss between the **Client** and the **Contractor** should be allocated in the liability and indemnity sections of the **Contract**. Insurance is only one mechanism of risk financing and should not be used as a criterion for accepting risk.

## Contractual Language

### Contractor’s Insurance Obligations:

**Contractor** shall, as a minimum obtain and maintain in full force and effect throughout the duration of this Agreement and any extensions thereto the insurances set out below:

1. Workmen’s Compensation Insurance to comply fully with all applicable laws.
2. Employer's Liability Insurance, with a limit of USD\$5,000,000 per occurrence or, higher, if required by applicable laws, and to include coverage for legal expenses anywhere in the world.
3. Comprehensive General Third Party Liability insurance providing for Third Party property damage and personal injury including broad form contractual liability for any agreement and broad form property damage and in rem actions, with a limit of USD\$5,000,000 combined single limit any one occurrence.
4. Owned and Non-Owned Automobile Liability Insurance for bodily injury and property damage combined with limits of USD\$2,000,000 per occurrence, or as otherwise required by relevant law.
5. Protection and Indemnity insurance.

6. Hull and Machinery Insurance insuring any vessel(s) at the value agreed between Contractor and its insurers.
7. Any insurances which Contractor is obliged to carry under any applicable laws.

**Contractor** shall procure insurances that shall:

1. to the extent of the liabilities assumed by Contractor under this Agreement, be primary coverage with respect to all other insurances;
2. to the extent of the liabilities assumed by Contractor under this Agreement, be endorsed to provide that the underwriters waive any rights of recourse, including in particular subrogation rights against Company Group;
3. to the extent of the liabilities assumed by Contractor under this Agreement, have Company Group's interest endorsed thereon as an additional insured (as regards liability insurance or any policy or policies containing liability sections, but excluding Employer's Liability and Workmen's Compensation and for Protection & Indemnity Insurance such endorsement shall be "Protective Co-Insured");

All deductibles or other self-insured retentions applicable to the foregoing insurances shall be solely for the account of **Contractor**.

The requirements regarding insurance contained in this Clause shall be without prejudice to and shall not reduce or affect **Contractor's** indemnities nor limit **Contractor's** liabilities under this Agreement. The insurance amounts set out above are minimum requirements, and they are not to be construed as Company's consent to accept financial liability in excess of the amounts set forth except as otherwise agreed in this Agreement.

Prior to commencement of the Services, **Contractor** shall furnish Company with certificates of insurance and thereafter, renewals of certificates of insurance thereof as requested. Such certificates shall be fully endorsed in accordance with the requirements of this Agreement.

### **Company's Insurance Obligations:**

**Company** shall, as a minimum obtain and maintain in full force and effect throughout the duration of this Agreement and any extensions thereto the insurances set out below:

1. Workmen's Compensation Insurance to comply fully with all applicable laws.
2. Employer's Liability Insurance, with a limit of USD\$5,000,000 per occurrence or, higher, if required by applicable laws, and to include coverage for legal expenses anywhere in the world.
3. Comprehensive General Third Party Liability insurance providing for Third Party property damage and personal injury including broad form contractual liability for any agreement and broad form property damage and *in rem* actions, with a limit of USD\$5,000,000 combined single limit any one occurrence.
4. Owned and Non-Owned Automobile Liability Insurance for bodily injury and property damage

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combined with limits of USD\$2,000,000 per occurrence, or as otherwise required by relevant law.

5. Protection and Indemnity insurance.
6. Any insurances which Company is obliged to carry under any applicable laws.

**Company** shall procure insurances that shall:

1. to the extent of the liabilities assumed by Company under this Agreement, be primary coverage with respect to all other insurances;
2. to the extent of the liabilities assumed by Company under this Agreement, be endorsed to provide that the underwriters waive any rights of recourse, including in particular subrogation rights against Contractor Group;
3. to the extent of the liabilities assumed by Company under this Agreement, have Company Group's interest endorsed thereon as an additional insured (as regards liability insurance or any policy or policies containing liability sections, but excluding Employer's Liability and Workmen's Compensation and for Protection & Indemnity Insurance such endorsement shall be "Protective Co-Insured");

All deductibles or other self-insured retentions applicable to the foregoing insurances shall be solely for the account of **Company**.

The requirements regarding insurance contained in this Clause shall be without prejudice to and shall not reduce or affect **Company's** indemnities nor limit **Company's** liabilities under this Agreement. The insurance amounts set out above are minimum requirements, and they are not to be construed as Company's consent to accept financial liability in excess of the amounts set forth except as otherwise agreed in this Agreement.

Prior to commencement of the Services, **Company** shall furnish **Contractor** with certificates of insurance and thereafter, renewals of certificates of insurance thereof as requested. Such certificates shall be fully endorsed in accordance with the requirements of this Agreement.