



## American Subcontractors Association, Inc. Subcontractor's Negotiating Tip Sheet Owners & Contractors Protective Liability Policy

### Sample Language

#### ASA Recommends:

"If available, then before commencement of work, Subcontractor may be required to provide, at Customer's expense, an Owners & Contractors Liability Policy (CG 00 09) naming Customer, project owner and such others as Customer may designate as insureds, with limits of liability equal to the limits of the primary general liability policy required to be maintained by Subcontractor. All such named insureds waive all claims and rights of subrogation they may have against Subcontractor for losses and claims covered by the said Owners & Contractors Protective Liability Policy, which shall provide for such waivers of subrogation by endorsement."

#### What You May See in the Wild:

**Note:** A subcontractor is unlikely to find OCP language in its customers' proprietary documents.

#### Additional Resources:

ASA *Subcontract Addendum* (2011), ¶ 15. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

White Paper: "*Hold Harmless*" *Reborn: Insurance Requirements* (2009). Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*Risk Transfer: Frequently Asked Questions*. Available to ASA members at [www.ASAonline.com](http://www.ASAonline.com).

*ConsensusDocs Form 750, Standard Agreement Between Constructor and Subcontractor* (2012), ¶ 9.2.11. Available at [www.ConsensusDocs.org](http://www.ConsensusDocs.org); ASA members can get a 20 percent discount by entering ASA100.

### Impact on the Subcontractor

- The subcontractor's risk of big dollar losses will be significantly limited.
- The subcontractor's experience rating will not be impacted, even by a major loss.

### Negotiating Tips

**When the GC Says:** "We prefer that you name us as an additional insured. We don't want this insurance policy."

**The Sub Should Say:** "An OCP is an effective substitution for our naming you as an additional insured. The policy will be in your name and provide first dollar coverage, including defense."

**When the GC Says:** "We prefer that you provide your normal insurance coverage."

**The Sub Should Say:** "We will still be carrying our normal insurance. With an OCP you will be getting an extra layer of insurance protection on top of our normal insurance coverage."

**When the GC Says:** "We still need you to provide for our defense in the case of claims."

**The Sub Should Say:** "We will agree to pay attorney fees to the extent that we are negligent. The OCP may kick in for your defense needs provided you aren't actually negligent."

**When the GC Says:** "We're concerned about third-party claims."

**The Sub Should Say:** "This policy will protect you from third-party overs and, again, provide first-dollar defense coverage."