

harvest report

Information and Risk Management Ideas for Harvesting Operations

Risk Management Via Good Contracts and Insurance Risk Transfer

WHETHER you are the land owner, logger, hauler, or subcontractor, your job will likely be defined by contract. One of the most important steps in managing your risk exposure is to consistently use well-written contracts. When working on smaller jobs or with repeat or referred subcontractors, it may be tempting to forego written contracts. If there is a misunderstanding, there's nothing in writing that captures the mutual agreement at the start of the project.

The best approach is to work with legal counsel in developing a standard contract and to implement its use with all jobs. The contract should contain standard terms and conditions that restate obligations, reflect operational procedures, and react to applicable state law on liability exposure. Below are some provisions for consideration:

Description of Services

It's important that the contract clearly define what both parties will do, including relevant due dates and duration of services to eliminate confusion as to what is included and who is responsible for specific tasks.

Payment Terms

You need to establish payment amounts for services provided, as well as due dates for those payments. Payment disputes can quickly escalate to allegations of dissatisfaction with respect to services provided. Contractual agreements can help reduce disputes over payments.

Risk Transfer Through Insurance

Any time you hire a subcontractor, including haulers, a certificate of insurance should be required that evidences limits equal to your own insurance, and provides assurance that the insurance company is financially strong. At a minimum you should require evidence of general liability (including the loggers' property damage endorsement), automobile, and workers' compensation insurance. You should also be named an additional insured under the subcontractor's general liability and auto policies. While your subcontractor's insurance will be "primary" should a claim be brought against them while working on your behalf, you could also be named in the suit. By being an additional insured on the subcontractor's policy, that policy would be responsible for your defense and any judgment within the subcontractor's policy limits.

Indemnification Agreements

Also referred to as "hold harmless" agreements, indemnification agreements allocate liability among parties. The preferred outcome is that each party bears the risk for its negligent acts, errors, or omissions through a mutual indemnification agreement. Most courts will not allow one party to pass its sole negligence to another. But in many jurisdictions, one party can be forced by contract to defend and pay on the other party's behalf for harm that is actually the result of the actions or inactions of both parties. If you are asked to hold

others harmless for their negligent acts, errors, or omissions, you should seek a mutual indemnification clause. When both parties are negligent, each should assume liability according to their respective negligence. If you use subcontractors you should require signed hold harmless agreements.

Limitation of Liability

A limitation of liability provision helps to create a balance between the risk assumed in a contract and the scope of services and compensation. Even if the limitation of liability might not be enforceable in every dispute, it can educate subcontractors about reasonable exposures. If a dispute or accident occurs, a limitation of liability creates a starting point for negotiating your liability. It's important that the amount of the limitation bear a reasonable relationship to the contract. Random dollar amounts, particularly artificially low amounts, are unlikely to be enforced by courts. You should work closely with a local attorney since a limitation of liability provision has to be tailored to meet state law requirements. Be aware, limitations of liability only apply to the parties that agree to them in a contract.

Waiver of Consequential Damages

Consequential damages, also known as special, indirect, or incidental damages, occur as a result of direct damages. For example, direct damages may include the cost to complete or redo work that was not completed properly (i.e., clean up), while consequential damages might



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include lost income from delays in completing work to the agreed-upon standard. You should contractually disclaim responsibility for consequential damages, lost profits, and production time. Allegations of lost profits are often higher than actual damages.

Consistently using a contract with key provisions and using proper insurance risk transfer helps establish mutual agreement among the parties and clearly assigns responsibilities. Standard contract provisions should be used to achieve a fair distribution of benefits and liabilities. When another party is unwilling to alter an onerous contract you should weigh the long-term effects of a potential dispute and evaluate the impact it may have on your resources, reputation, insurability, and particularly your finances.

Contract Review Checklist

1. Description of Services?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Milestones for Performance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Payment Terms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Cancellation Provision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Hold Harmless in Your Favor?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Hold Harmless in Other Party's Favor?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Limitation of Liability?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Limitation Tied to Contract Amount?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Disclaimer of Consequential/Incidental Damages?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Provision for Changes Only in Writing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Contract Legal Review?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Insurance Checklist

1. Adequate Certificate of Insurance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Additional Insured on GL & Auto Policies?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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