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Insurance Uncovered

Contract Works Insurance Defective Property/Defective Design (DE) Exclusions

This document deals with DE exclusions purely in the context of contractor clients who hold Contract Works Policies.

What is Contract Works Insurance?

It relates to the provision of cover for damage to works executed by a contractor or to be executed by a contractor under a contract.

What constitutes Damage?

The definition is wide and certainly wider than a standard material damage cover for buildings that are not “works”. Typically, all risks of loss or damage is within scope including theft not involving forcible/violent means.

Is “All Risks” really “All Risks”?

No. Insurers use this term to indicate that cover is broad by insurance market standards but there are always standard type exclusions (headlined in Blackford’s separate document on Contractors All Risks Insurances). The intent of this document is to deal with the detailed examination of only one of these exclusions; this being the exclusion of defective design/defective property.

What are defective property/defective design (DE 1 to 5) exclusions?

Typically, Contract Works Policies cover defects but only where there is physical damage to the works and the extent of cover is subject to the operative “DE” clause. These clauses vary enormously; there being 5 different versions of them (called DE 1 to 5) and each one is examined

below both generically and in the context of a specific potential claims example to illustrate in practical terms how each clause responds.

In simple terms, at its’ widest, the exclusion can apply to all costs incurred in replacing, repairing or rectifying property which is defective due to defect in workmanship, materials, design, plan or specification. At its’ narrowest, the exclusion can apply solely to the component part that is defective due to defect in workmanship, materials, design, plan or specification i.e. property other than the component part being free of defect is deemed to be out with the exclusion.

Contract Works insurance market norm is DE3.

The potential claims example to illustrate the operation of each of DE 1 to 5:

A concrete column fails because its’ inner steel supporting rod (the faulty part) is defective in design or material and the roof collapses causing extensive damage to the floor below.

How does Exclusion DE1 (known as the Outright Defect Exclusion) respond?

The intent is to exclude any and all damage due to property in a defective condition.

Accordingly, no cover would be provided.

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How does Exclusion DE2 (known as the Extended Defective Condition Exclusion) respond?

The intent is to exclude damage to a) property that is in a defective condition, or b) property that relies on a) for support. Consequential damage to any other property free of defective conditions, however, is covered.

Accordingly, cover would be provided for the floor only i.e.. NOT the column, roof or supporting rod.

How does DE3 (known as the Limited Defective Condition Exclusion) respond?

The intent is to exclude damage to property that is in a defective condition, in whole or in part. Covers consequential damage to any other property free of defective condition.

Accordingly, cover would be provided for the floor and roof i.e. NOT the column or supporting rod.

How does DE4 (known as the Defective Part Exclusion) respond?

The intent is to exclude damage to only that constituent part of the property that is deemed defective (i.e. the “faulty part”). Covers consequential damage to any other property free of defective condition.

Accordingly, cover would be provided for the floor, roof and column i.e. NOT the supporting rod.

How does DE5 (known as the Design Improvement Exclusion) respond?

The intent is to cover all damage excluding only the additional costs of improvements to the original design, materials etc.

Accordingly, cover would be provided for all of the above i.e. floor, roof, column and supporting rod. What would be excluded would be any betterment in relation to the supporting rods.

What to expect from Insurers?

As already mentioned, insurance market norm is DE3. In the event that DE1 or DE2 apply, a reduced premium could be reasonably expected. Conversely, the wider DE4 & DE5 covers ordinarily attract additional premium. DE5 is ordinarily very selectively granted by Insurers and typically subject to a substantial excess. Insurers may also impose an inner limit (i.e. reduce the Contract Works Sum Insured) in respect of incidents that are within the scope of DE5 cover.

To find out more about the cover you purchase, or to arrange an audit of your existing policies, please [get in touch](#).

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