

JCT DESIGN AND BUILD 2024 FITNESS FOR PURPOSE AND NEC4 OPTION X15

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Design liability under construction contracts can run far ahead of what professional indemnity policies will respond to. PI policies typically cover negligence — the failure to exercise reasonable skill and care. They do not typically cover strict contractual obligations to achieve a specified result. The JCT Design and Build Contract 2024 and the NEC4 Engineering and Construction Contract each take different approaches to this risk.

JCT DB 2024

The JCT Design and Build Contract 2024 (DB 2024) places the design obligation on the contractor at clause 2.17.1. The standard wording is that the contractor warrants reasonable skill and care in carrying out the design — the negligence standard. This aligns with what PI cover responds to.

However, the JCT DB 2024 Employer's Requirements often contain wording that elevates the standard above negligence. Where the Employer's Requirements specify that the building must achieve a particular performance outcome — a U-value, an air-tightness figure, a carbon performance, a Building Regulations compliance threshold — the contractor may have taken on a strict obligation to achieve the outcome. If the outcome is not met, the contractor is in breach even if it exercised reasonable skill and care.

THE PI CONSEQUENCE

The strict element is the fitness-for-purpose limb. PI policies in the construction market almost universally exclude strict contractual liabilities to achieve a result. A contractor that has signed up to a fitness-for-purpose obligation in the Employer's Requirements is taking on uninsured exposure unless the policy contains a specific extension — and most do not.

NEC4 OPTION X15

NEC4 takes a different approach. The default design liability is reasonable skill and care, but the contract is silent unless the parties expressly add Option X15. NEC4 Option X15 explicitly limits the contractor's design liability to reasonable skill and care, and provides that the contractor is not liable for defects in the works due to its design where it can show that it used reasonable skill and care.

Option X15 protects the PI-cover position. Without it, the courts may imply a fitness-for-purpose term — particularly on residential dwellings under the Defective Premises Act 1972 — and the contractor may end up with the same uninsured exposure as on JCT DB 2024 without express care being taken.

DESIGN-AND-BUILD CONTRACTORS

Our [design and build contractors PI insurance guide](#) sets out the policy treatment of these obligations and the steps to consider at tender stage. Engineering consultancies that take design responsibility on behalf of a contractor — through novation or otherwise — should read our [engineers PI insurance guide](#) alongside it, since the consultant's PI cover may need to step up to the level of the contractor's contractual liability.

THE CONTRACTOR'S COLLATERAL WARRANTY POSITION

Collateral warranties given to funders, tenants and purchasers often contain a fitness-for-purpose clause separately from the underlying building contract. A contractor may have a negligence standard in the building contract and a strict standard in the collateral warranty given to the funder. PI cover responds to one but not the other.

PRACTICAL STEPS AT TENDER

Contractors and consultants may want to consider the following before signing up:

- Reviewing the Employer's Requirements for outcome-based language and clarifying whether reasonable skill and care is the standard.
- Confirming whether NEC4 Option X15 is incorporated where NEC is used.
- Checking each collateral warranty for fitness-for-purpose language before execution.
- Notifying the PI broker of any obligation that may sit outside negligence so the wording can be reviewed.

BUILDING SAFETY ACT OVERLAY

Where the project is an HRB under the Building Safety Act 2022, the duty-holder regime under part 4 of the Act adds further obligations on the principal contractor and principal designer. Those obligations are statutory; they sit alongside the contractual position and may attract separate PI considerations.

RELATED PROFESSIONAL INDEMNITY GUIDES

- [Design And Build Contractors PI](#)
- [Engineers PI](#)