

CONSTRUCTION WARRANTIES

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Introduction

In recent years warranties have been the subject of much concern. More often than not, the discussion focuses on the complexities of specifying extended *Product* and system warranties. This bulletin provides a brief explanation of the main types of warranties and an overview of the points to consider when specifying extended warranties.

Purpose

A construction warranty:

- protects the *Owner* against defects or failures within the warranty period;
- provides a remedy to the *Owner* for non-conformance with the *Contract* discovered prior to or after *Substantial Performance of the Work*;
- gives the *Owner* recourse against other parties (e.g. manufacturers, subcontractors, and suppliers) who may not be in a direct contractual relationship with the *Owner* but who provide extended warranties directly; and
- defines the responsibilities of all parties regarding the coverage of the warranty.

Construction Warranties

The overall warranty period for the *Work* under CCDC contracts is one year from the date of *Substantial Performance of the Work*. The *Contractor* is responsible to correct at his/her own expense, defects or deficiencies in the *Work* which appear during the one-year warranty period.

Warranties for longer than one year (i.e. extended warranties) may be specified for certain *Products* (*Product* warranties) or portions of *Work* (system warranties) in the specification sections of the *Contract Documents*.

Extended warranties are typically of two types:

- *Product* warranties covering replacement of the *Product*, and
- System warranties covering replacement of the *Product* and the entire installation (e.g. roofing systems, glazing systems, mechanical or electrical systems).

Extended Product Warranties

Extended warranties for the replacement of *Products* offered by product manufacturers usually only cover the *Product*, not the transportation, removal of the failed *Product*, reinstallation of its replacement or any associated labour costs. For example, a carpet manufacturer may warrant that its product will not zipper or edge ravel for a period of 10 years from date of installation. If this carpet fails to perform as warranted, the manufacturer's responsibility is usually limited to the supply of replacement product and will not include the removal of the existing carpet, installation of the new carpet or such incidental costs as moving of furniture. CCDC contracts stipulate that the *Contractor's* responsibility with regard to extended *Product* warranties is limited to obtaining the extended warranty documentation on the *Owner's* behalf from the manufacturer or supplier (warrantor). The extended *Product* warranty documentation is to be issued by the manufacturer or supplier to the benefit of the *Owner*.

Extended System Warranties

Extended system warranties cover the supply and installation of a component or group of components. These extended warranties are normally offered by manufacturers and cover components typically installed by a *Subcontractor* approved by the manufacturer. Extended system warranties usually contain restrictive provisions which significantly limit the warrantor's liability and the *Owner's* recourse in the event of a failure. For example, a manufacturer's inverted roof system warranty may cover the cost of repairing leaks which occur as a result of defects in their roof system components or defects in installation for a period of 5 years from the date of *Substantial Performance*. Should a leak develop in the system, the manufacturer's responsibility normally would not include the costs for removal and reinstallation of roof top landscaping materials or the costs associated with repair of interior finishes damaged as a result of the roof leak. The warranty could require the payment of a fee by the *Owner* and may state that any claims under the terms of the warranty be made within a very restrictive time period. As with extended *Product* warranties, extended system warranties are obtained by the *Contractor* from the warrantor and issued by the warrantor to the benefit of the *Owner*.

Benefits

There are immediate benefits that can be gained from an equitable extended warranty that may make it worth the extra cost to the *Owner*. These benefits include the prequalification of the installer by the manufacturer, the manufacturer's involvement in the construction process, and the extended protection against failure. For the extended warranties to be effective, the warrantor must be financially secure to cover its potential liability.

Limitations

Extended warranties are **not** all-inclusive insurance policies designed to cover any problem regardless of circumstance. Since these warranties are normally written by the manufacturer, from the manufacturer's perspective, they invariably contain language that limits the scope of coverage. Extended warranties usually exclude consequential and incidental damage to any building component other than the warranted *Product* or system itself. Even the most comprehensive extended warranties that cover material and workmanship, generally provide that the warrantor will only repair faults that result from specific causes enumerated in the warranty.

Warranties should be carefully read to determine exactly what is covered and what is excluded. The exclusions and limitations are very important.

Specifying Extended Warranties

The *Consultant* should be familiar with standard warranties offered for specified *Products* and systems as well as the physical qualities and performance characteristics of the products. The size, stability and reputation of the manufacturer and its ability to make good on a warranty claim may be more important than the terms of the warranty itself.

When specifying warranties the *Consultant* should avoid:

- relying on a warranty as a substitute for a thorough investigation of a *Product* or system and an assessment of its manufacturer; and
- requiring warranty coverage that is not available for a particular *Product* or system.

The *Consultant* should determine before producing the specifications:

- whether extended warranties are offered or available;
- the standard terms and conditions of extended warranties;
- whether the terms of standard extended warranties are negotiable;
- whether other terms can be specified;
- the cost associated with provision of the extended warranty; and
- whether the *Owner* will receive a cost-effective benefit from an extended warranty.

The best assurance of long-term performance is a combination of good, rigorously tested materials and system; appropriate design; and skillful workmanship. No warranty can adequately compensate for the lack of these key elements.

References

1. CCDC 20, a guide to the use of CCDC 2- 1994 stipulated price contract.
2. Construction Specifications Canada, Registered Specification Writer Level 2 Home Study Course.
3. Construction Specifications Canada, Construction Specifications Handbook

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