



GUARANTEES -"ARE THEY WORTH THE PAPER THEY ARE WRITTEN ON?"

Common Law and a Construction contract provide reasonable protection to consumers of products and services without the additional and specific provisions sometimes called for by those writing construction contract specific conditions including guarantee requirements to extend the period of protection.

The Consumer Guarantees Act and the Sale of Goods Act exist to extend the responsibility of the provider of both goods and services and may provide more protection to a client than a poorly worded contract warranty provision.

Be aware that in setting the requirement for a warranty, in checking the wording of the warranty offered and in ensuring that the signed warranty agreement is obtained from the contractor and delivered to the client, risk exists to the architect.

Be aware that requesting a warranty also incurs a cost addition to the contract sum and this additional cost included in the tender may not offer value.

Some warranties are not worth the paper they are written on.

Many who have tried to pursue a warranty for building work have discovered that although a manufacturer may back up the product, one must look to the installer for a failure in workmanship. Proving the failure and pursuing the installer may take considerable effort. If it then transpires that the installer is of no substance and the client has relied on the comfort of the warranty, there could well follow accusations that the architect's design was deficient and/or that the architect "failed to adequately supervise".....

A recent claim concerned the failure of a product where a company offered all the preparation, installation, and expected service life as a package backed by a comprehensive warranty. Upon failure, the architect's exposure to liability was dependent on whether the proper steps had been taken to check out the track record of the product and of the supplier, and to consider whether the terms of the warranty were suitable and likely to be met.

In circumstances where there exist industry standard warranties, or where the performance of a particular product is critical and the supplier/installer has substance and is likely to be able to make good, then the "reasonable architect" would take the

necessary steps to protect the client's interests by seeking a guarantee. In the alternative, a performance bond could be sought to the same effect, with perhaps less exposure to the perils of insolvency. In each case there will be additional cost to the client in order to fund the risk carried by others.

In other circumstances, it would be drawing a long bow to accuse the architect of negligence for failing to seek a guarantee on all manner of items. There are legal avenues to make good failure arising out of contracts, and provisions in Standard General Conditions of Contract to do so. These may be more effective than poorly worded guarantees which may be interpreted as (limiting) the responsibilities of the contractor. If the architect sets the terms and the extent of the guarantee this may increase their own exposure to risk whilst failing to adequately protect their client.

Consideration and care should be given if guarantees are sought. Failure to secure them prior to certifying final completion could expose the architect to the costs that may arise from the guarantees not being available for the period in which they would otherwise have been in force. While such an action may not be justified or successful, it will exact its toll of time, cost and stress before it is laid to rest!

The purpose of a guarantee is to transfer the risk of making good a failure to those responsible for the supply or installation, thereby reducing the risk that the client (or architect) needs to meet that cost. If you are not satisfied that a guarantee will reduce that risk, then it would be better to advise your client to accept what may be a realistic and reasonable level of risk. To reach that decision requires consideration and care.

When is a warranty a guarantee?

Some say a subcontractor or supplier provides a warranty. That warranty may be assured or guaranteed by a main contractors guarantee.