

SWK Guarantee and Warranty Regulation 2024

This English translation is provided for convenience only. The original Dutch version prevails in the event of conflicts, discrepancies or inconsistencies between the Dutch version and this translation.

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Part 1 Introduction

1. The importance of having a home with an SWK guarantee

Buying a home involves making long-term financial commitments that have a major impact on spending patterns. It makes sense that this should be matched by a product that will hold its value for years to come.

Building a home is a complex process. Not only does it involve many different people, such as an architect, a building contractor, a structural engineer and installers, it is also an operation conducted in the open air. It is a process that entails a good deal of time and risk. During the construction period, the contractor could run into financial difficulties. This would be a financial disaster for the buyer. The contractor could also encounter financial problems after the handover while there could be legitimate complaints about the home.

SWK issues an SWK warranty certificate for every new build home registered by its affiliated contractors. This certificate covers the buyer against the risks referred to above. If a situation as described occurs during the construction period, the SWK warranty certificate covers the completion of the home. If such a situation occurs during occupancy, complaints will be remedied under certain conditions. This is the cover formally available under the SWK warranty certificate.

The guarantee is the contractor's formal promise to the buyer that the home meets certain guarantee standards set out in the SWK Guarantee and Warranty Regulation. One could in fact say that the insurer engaged by SWK covers the contractor's performance of the guarantee obligations. This insurance is important if the contractor refuses to resolve a legitimate complaint or is no longer able to resolve a legitimate complaint due to financial difficulties.

Contractors affiliated with SWK are obliged to observe the guarantee standards. For the sake of clarity, it is useful to know that SWK assesses which contractors may affiliate themselves with it. It does so on the basis of various criteria, including financial and technical assessments of prospective affiliates.

This brochure describes the protection that buying a home with an SWK guarantee provides you. The homes mentioned in this brochure are either single-family houses or condominiums, owner-occupied or rental homes, and they may be either new build homes or part of a renewal construction plan combining existing with new construction.

If you buy a condominium, you do not become the owner of an individual house but rather a co-owner of an entire apartment building. In case of an apartment building, all buyers become co-owners of the entire building. An apartment building is or will be divided into condominiums (*appartementsrechten* in Dutch). Legally, you buy a condominium and not an apartment. The areas intended for private use are called the individually owned units (*privégedeelten*). These are living areas as well as storage rooms and garages, for example. What remains are the communal areas, which are for everyone. The most common examples of these are the foundation, the shell of the building, the stairwells, lifts, corridors, access balconies and the roof.

These communal areas generally make up most of the building. The property division deed determines what is individually owned and what is communal. The individually owned units are handed over separately from the communal areas. The individually owned unit is handed over to the buyer, whereas the communal areas are handed over to the joint buyers (the "handover of communal areas"). All owners are automatically members of the Owners' Association (*Vereniging van Eigenaars*). By law, this association is formed by the execution of the notarial property division deed. It is the Owners' Association that acts in all matters relating to the communal areas. Every individual condominium owner obtains a separate SWK warranty certificate for his/her individually owned unit.

As the Owners' Association manages the communal areas of the apartment building, a guarantee for the communal areas is given to the Owners' Association. After the handover of the communal areas, the Owners' Association obtains its own SWK warranty certificate in respect thereof.

2. SWK: quality with security

Established in 1978, SWK is the brainchild of *Neprom* and *VGBouw*, two Dutch trade associations for the construction industry. The biggest contractors involved in developing and completing a wide variety of construction works, both nationally and internationally, are affiliated with SWK. An SWK warranty certificate gives the buyer:

- quality: SWK continuously screens the financial and technical quality of its affiliated contractors;
- security: as things can go wrong despite SWK's screening, major risks are insured during construction and following the handover;
- unburdening: SWK can mediate between you and the contractor if you are unable to resolve complaints directly with the contractor. If the contractor runs into financial difficulties, SWK unburdens you by taking care of all the hassle. This includes consulting with administrators/liquidators, documenting the progress made with the work and arranging for another contractor to resume construction.

GarantieWoning Label (*Keurmerk GarantieWoning*)

The foundation *Stichting GarantieWoning* was formed in 2010. Its objects are to enhance the quality of new build homes and to foster trust between buyers and providers of those homes. To achieve these objects, the foundation established the GarantieWoning Label (*Keurmerk GarantieWoning*). To qualify for this label, a warranty issuing organization must ensure that its guarantee and warranty regulation, model contract and dispute settlement procedure meet certain minimum criteria.

The SWK Guarantee and Warranty Regulation, dispute settlement procedure and the contracts used meet the criteria set by *Stichting GarantieWoning*. *Stichting GarantieWoning* has therefore accorded the SWK Guarantee and Warranty Regulation the GarantieWoning Label. Given this label, a buyer who purchases a home with an SWK warranty certificate knows that he is adequately protected against any risks if the contractor is in default. The Nationale Hypotheek Garantie and many banks only approve building plans that are insured on the basis of this label.

SWK was established to respond in a timely manner to developments in consumer protection, in particular in those cases where the buyer of a home bears the financial risk should the contractor go bankrupt.

In the owner-occupier housing market, contractors affiliated with SWK distinguish themselves by having their own quality service. Many of them also have a certified quality system.

Every year, the financial position of SWK's affiliated contractors is assessed and random checks are carried out on the quality of the homes built by them. SWK itself also closely monitors developments in quality using a computerized complaints system. In addition, SWK can mediate in the event that problems arise between buyers and contractors.

SWK issues warranty certificates on behalf of the insurer to buyers of homes built by SWK's affiliated contractors. Within the parameters of the SWK Guarantee and Warranty Regulation, this SWK warranty certificate protects buyers against the risks associated with buying a new home.

Broadly speaking, SWK's work is as follows:

- assessing and registering contractors and building plans;
- financial and technical screening of affiliated contractors;
- providing information and advice;
- complaint handling and mediation;
- issuing SWK warranty certificates (on behalf of the insurer);
- receiving notifications of loss or damage.

Enhanced Quality Assurance

Under the Dutch Quality Assurance (Building Sector) Act (*Wet kwaliteitsborging voor het bouwen*, “Wkb”), SWK occupies the role of instrument provider. SWK has developed the Enhanced Quality Assurance instrument (*VKB Instrument*) for quality assurance providers.

Part 2

The SWK guarantee

1. Introduction

This part explains how the SWK guarantee system has evolved.

2. SWK contractors are quality contractors

Contractors affiliated with SWK must meet strict financial requirements and are assessed for their technical and professional competence. They have also proven their worth. In addition, submitted building plans must meet predetermined legal and building standards.

3. Model contract

a. General

Contractors affiliated with SWK are required to use a model contract with accompanying General Terms and Conditions and General Notes. The model contract is the contractual basis for the legal relationship between you as buyer, and the contractor. It also declares the SWK Guarantee and Warranty Regulation applicable. Based on this contract, an SWK warranty certificate is issued to the buyer of the home and, where applicable, to the Owners' Association.

The model contracts ensure a balance between the rights and obligations of the buyer and those of the contractor.

A model contract may not be departed from without SWK's prior authorization. The model contract therefore gives you legal certainty. In addition, supplements to the model contract are used. Examples of these are standard additions to the contract, such as municipal terms and conditions. If you have any questions about this, you can contact the contractor you concluded the contract with or SWK.

b. Content of the model land purchase/building contract

Model contracts cover many topics. For example, the model land purchase/building contract covers the following topics:

- specification of the land purchase price/building sum;
- transfer of title to the land;
- cooling-off period;
- construction period and construction interest;
- instalment scheme;
- resolutive conditions;
- changes during construction;
- handover procedure;
- statutory right of suspension (5% regulation);
- liability for construction defects;
- applicability of the SWK Guarantee and Warranty Regulation;
- cancellation of the land purchase/building contract;
- dispute settlement;
- suspensory conditions.

It would be going too far to discuss these topics in detail in this brochure. For further information, please refer to SWK's website (www.swk.nl).

c. Model contract variants

Depending on the specific situation, different model contracts are used in practice. For example, in addition to land purchase/building contracts for single-family houses and condominiums, there are also separate building contracts and purchase contracts for completed homes.

d. Latest models on SWK's website

In practice, model contracts are subject to change and, as stated above, variants of model contracts and additional provisions are used. You can always consult the latest versions of the model contracts on SWK's website.

4. Protection provided by the SWK Guarantee and Warranty Regulation

The contract between the buyer and the contractor declares the SWK Guarantee and Warranty Regulation applicable. This Regulation gives you, the buyer of a new build home, some important additional security. It is important to know that the SWK Guarantee and Warranty Regulation is in addition to the land purchase and/or building contract. The SWK Guarantee and Warranty Regulation gives the buyer additional rights.

What exactly does this SWK Guarantee and Warranty Regulation entail?

Firstly, in the contract the contractor undertakes to build your home (and, where applicable, the apartment building) according to the requirements of good and sound work and in compliance with government and utility company regulations, all in accordance with the relevant technical description, plan/s and drawing/s and any existing schedules of modifications.

The completion of your home (and the apartment building) is insured in the event of the contractor's insolvency. Specifically, this means that if the contractor becomes insolvent (i.e. goes bankrupt) while still building your home (and the apartment building), the insurer mentioned on your SWK warranty certificate will pay a completing contractor the additional costs of completing your home (and the apartment building). This warranty is called the **insolvency warranty**.

The insurer then has the choice between completing your home (or the apartment building) or refunding the instalments you have already paid, plus interest. The cover provided is up to 100% of the building sum. Having an SWK warranty certificate therefore means that your financial risk is almost non-existent.

Secondly, on the basis of the SWK Guarantee and Warranty Regulation, the contractor provides you with an SWK guarantee. This is a quality guarantee that the contractor provides to you, the buyer. It is an "extra" on top of the obligations that the contractor already has under the contract it has concluded with you and it commences three months after the handover of your home.

It is usually valid for six years, although shorter terms apply to certain parts of the home. There are also some exclusions. A 10-year guarantee period applies to serious defects.

In case of a condominium, two guarantee periods apply: one for the individual condominium owner's individually owned unit and another for the communal areas of the building. The guarantee period for the individually owned unit commences three months after its handover. Likewise, the guarantee period for the communal areas commences three months after their handover. Please note that only the Owners' Association is covered for the communal areas under the SWK guarantee.

The following is an outline of the cover provided by the SWK guarantee:

The contractor guarantees that, based on reasonably foreseeable external circumstances, the constructions, materials and parts used are sound and suitable for the purpose for which they are intended. The contractor also guarantees that the home and the building are in compliance with the requirements under the Buildings Decree (*Bouwbesluit*) and the Structures (Living Environment) Decree (*Besluit bouwwerken leefomgeving*, "Bbl") and that the home has the layout agreed between the parties.

The details of the guarantee standards with respect to construction are set out in a separate annex to the SWK Guarantee and Warranty Regulation referred to as the Guarantee Supplement. This annex consists of modules listing guarantee periods, guarantee exclusions and any additional guarantee

conditions. The SWK warranty certificate issued to you states which versions of which modules apply.

The contractor's compliance with the SWK guarantee is insured. This cover is called the **defects warranty**.

A guarantee holder may invoke this warranty in the following circumstances:

1. If the contractor becomes insolvent (i.e. goes bankrupt) after the SWK guarantee period commences, i.e. three months or more after the handover of the home and/or of the communal areas of an apartment building.
2. If the contractor fails to comply, or comply on time, with an award issued by the arbitrator of the Dutch Foundation for Consumer Complaints Boards (*De Geschillencommissie*) ordering the contractor to rectify a defect covered by the SWK guarantee, with the fulfilment of the warranty being limited to that defect.

The cover is capped at a total amount of €140,000 inclusive of VAT (2024 price level with annual indexation) per home for the entire guarantee period in case of a single-family home.

In the case of an individually owned unit of an apartment building, cover under the defects warranty is capped at €21,000 inclusive of VAT (2024 price level with annual indexation) per individually owned unit for the entire guarantee period. As regards the communal areas of an apartment building, the SWK Guarantee and Warranty Regulation provides cover of up to €119,000 inclusive of VAT (2024 price level with annual indexation) multiplied by the number of individually owned units in the building (for which an SWK warranty certificate has been issued), also for the entire guarantee period.

Only the actual text of the official SWK Guarantee and Warranty Regulation and the official notes thereto are binding. Therefore, always refer to the full text of the SWK Guarantee and Warranty Regulation including the notes. The text of both the SWK Guarantee and Warranty Regulation and the notes are set out below.

5. Fulfilment of warranties

Your SWK warranty certificate states the name of the insurer that provides you with the warranties. SWK works with this insurer. Contact SWK if you want to invoke the insolvency warranty or the defects warranty.

Buyers with an SWK warranty certificate have the security that they have insurance with a licensed insurer.

6. Dispute settlement

The final element of the SWK guarantee is its low-threshold dispute settlement procedure. Usually, disputes with the contractor about the contract or the SWK Guarantee and Warranty Regulation can be resolved by agreement. If this proves to be impossible, SWK can mediate to find a solution. If a dispute cannot be resolved amicably, it may be submitted to *De Geschillencommissie* in The Hague. If it is a dispute between a contractor and a private buyer or a group of private buyers, such as an Owners' Association, then it will be dealt with by the *GarantieWoningen* Complaints Board (*Geschillencommissie GarantieWoningen*). Disputes between a contractor and a corporate buyer are settled by the *Woningbouw* Complaints Board (*Geschillencommissie Woningbouw*). Both buyers of a home covered by an SWK guarantee and SWK contractors may submit disputes to *De Geschillencommissie*, the condition being that these relate to the SWK Guarantee and Warranty Regulation. If you have a dispute about your land purchase and/or building contract in which the dispute settlement procedure of *De Geschillencommissie* is declared applicable, you may also submit the dispute to *De Geschillencommissie*.

Buyers of SWK homes may also choose to submit their dispute to the ordinary courts. An important factor when choosing between *De Geschillencommissie* and the ordinary courts is that you may only invoke the defects warranty on the basis of an award issued by *De Geschillencommissie*. In the award,

the arbitrator of *De Geschillencommissie* will determine which part of the award concerns a breach of the SWK guarantee and is therefore covered by the defects warranty. The ordinary courts do not do this. In other words, no claim is available under the defects warranty on the basis of a decision of an ordinary court.

You or the Owners' Association may also contact *De Geschillencommissie* in the event of a dispute with SWK or the insurer mentioned on the SWK warranty certificate regarding the implementation of the SWK Guarantee and Warranty Regulation.

To make an informed choice between arbitral proceedings before *De Geschillencommissie* and proceedings before the ordinary courts, you are advised to consult the website of *De Geschillencommissie* (www.degeschillencommissie.nl), which provides detailed information about proceedings before *De Geschillencommissie*.

Part 3

Official text of the SWK Guarantee and Warranty Regulation 2024

This Regulation is accompanied by the Notes to the SWK Guarantee and Warranty Regulation 2024

Definitions

Building Sum

The amount agreed for carrying out the building work described in the Contract.

Property Division Deed

The notarial deed setting out the division into Condominiums.

Handover of Communal Areas

The Handover of Communal Areas is deemed to have taken place once the handover report has been drawn up and signed by or on behalf of the Contractor and one or more representatives of the Owners' Association.

Condominium

A share in the property involved in the division, carrying entitlement to the exclusive use of certain parts of the Building which, according to their design or layout, are or will be intended to be used as a separate whole and to the extent that an SWK warranty certificate has been issued in respect of that Condominium. This share may also include entitlement to the exclusive use of certain parts of the land belonging to the Building.

Bbl

The government building rules that all structures (including conversions) in the Netherlands must comply with. Any reference to Bbl in this Regulation is a reference to the Structures (Living Environment) Decree (*Besluit bouwwerken leefomgeving*) that applies to the (technical building activity) environmental and planning permit (*omgevingsvergunning*) obtained for the House or Building.

The Structures (Living Environment) Decree provides limited options for custom rules in the environment plan or for custom regulations. The building rules applicable to this Regulation include the rules provided in the Structures (Living Environment) Decree as well as any custom rules provided in the municipal environment plan and any custom regulations that have been stipulated. The Structures (Living Environment) Decree applies if the application for an environmental and planning permit was submitted after the Dutch Environment and Planning Act (*Omgevingswet*) entered into force.

Buildings Decree

The government building regulations that all buildings (including conversions) in the Netherlands must comply with. Any reference to the Buildings Decree in this Regulation is a reference to the version of the Buildings Decree that applies to the environmental and planning permit (subactivity 'construction') obtained for the House or Building. The building regulations that apply to this Regulation include the regulations in the Buildings Decree and the regulations explicitly referred to in the Buildings Decree.

The Buildings Decree applies if the application for an environmental and planning permit was submitted before the Dutch Environment and Planning Act entered into force.

De Geschillencommissie

The Dutch Foundation for Consumer Complaints Boards, based in The Hague. The *GarantieWoningen* Complaints Board (*Geschillencommissie GarantieWoningen*) settles disputes in which the Guarantee Holder is a natural person or an Owners' Association. The *Woningbouw* Complaints Board (*Geschillencommissie Woningbouw*) settles disputes in which the Guarantee Holder is a legal entity (but not an Owners' Association).

Guarantee Holder

The Buyer within the meaning of this Regulation, or otherwise the party which, according to this Regulation, may exercise the Buyer's rights under this Regulation, as well as the Owners' Association in respect of the part coming under its responsibility.

Guarantee Standards

The standards described in this Regulation with which a House or a Building must comply.

Guarantee Supplement

The annex declared applicable in this Regulation and setting out the guarantee conditions, guarantee periods and guarantee exclusions. The Guarantee Supplement is broken down into modules listing guarantee periods, guarantee exclusions and any additional guarantee conditions.

Building

A building or complex of buildings divided (or yet to be divided) into Condominiums and containing Individually Owned Units.

Defects Warranty

The insurance that covers defects after the guarantee period commences. This Defects Warranty is also referred to as the repair warranty.

Communal Areas

The parts of the Building which, according to the Property Division Deed, are not or will not be intended to be used as Individually Owned Units.

House

A single-family house intended for use by the Buyer.

Insolvency Warranty

The insurance that covers completion of the construction in the event that the Contractor becomes insolvent before the guarantee period commences. The Insolvency Warranty is also referred to as the completion warranty.

Additional Work

The additional work on the House or Individually Owned Unit agreed in writing between the Contractor and the Buyer after the original Contract has been concluded.

Model Contract

The model contracts adopted and published in connection with this Regulation regarding the construction and/or purchase of a House or an apartment/Condominium with the accompanying General Terms and Conditions and General Notes.

Contractor

A contractor listed in SWK's Register of Affiliated Contractors as well as (as regards Articles 3 et seq) the contractor who was listed when the SWK warranty certificate was applied for.

Handover

The handover of a House or Individually Owned Unit. The Handover will be deemed to have taken place if the Buyer has taken receipt of the keys and the Handover report has been drawn up and signed by or on behalf of the Contractor and the Buyer.

Contract

The specific contract entered into between the Contractor and the Buyer.

Plan Acceptance

The written confirmation, provided by SWK to the Contractor, that the Houses or Buildings included in the submitted building plan have been listed in the Register.

Individually Owned Unit

A part of a Building that is intended to be used by the Buyer as a separate whole according to the Property Division Deed.

Register

The register kept by SWK listing the building plans that have been accepted under this Regulation.

Register of Affiliated Contractors

The register kept by SWK listing all Contractors affiliated with SWK.

SWK

SWK, having its registered office in Rotterdam.

SWK Guarantee

The quality guarantee on the House or the Individually Owned Unit and/or the Communal Areas which the Contractor provides to the Guarantee Holder under this Regulation.

SWK Warranty Certificate

A certificate of insurance on the basis of which the Guarantee Holder is covered by the Insurer under the Insolvency Warranty and the Defects Warranty.

Owners' Association

The association of which the Buyer or Guarantee Holder automatically becomes a member upon the transfer of title to the Condominium.

Buyer

- a. A natural person who or legal entity which has entered into a Contract with a Contractor for the construction of or transfer of title to a yet to be built or newly built House with the intention of using it him or itself.
- b. A natural person who or legal entity which has entered into a Contract with a Contractor for the transfer of title to a Condominium in a yet to be built or newly built Building that will be or has been divided into Condominiums, whereby the Condominium owner, as a party entitled to a share, acquires the exclusive use of an Individually Owned Unit in addition to his ownership interest in the Building. This Condominium owner must have the intention of using this Individually Owned Unit himself.

Insurer

The insurer mentioned in the SWK Warranty Certificate.

General

General provisions

Article 1

- 1.1 The Contractor undertakes to construct and/or transfer title to and guarantee the Houses or Buildings listed in the Register, as provided below.
- 1.2 The Insurer provides insurance cover under the Insolvency Warranty and the Defects Warranty.

Applicability of this Regulation

Article 2

- 2.1 This Regulation applies to Buyers and Guarantee Holders as defined in this Regulation.

- 2.2 This Regulation applies to a House or Individually Owned Unit and/or Building, as defined in this Regulation, as well as to Additional Work notified to the Insurer through SWK.
- 2.3 In consultation with the Insurer, SWK may depart from the provisions of Article 2.1 and Article 2.2, as well as from the definitions of Buyer, House, Individually Owned Unit and Building, for Contractors affiliated with SWK, subject to certain conditions or not, provided that any such departure is not to the detriment of the Guarantee Holder.

Section I: Obtaining the SWK Warranty Certificate

SWK Warranty Certificate for the Buyer in relation to a House or Individually Owned Unit

Article 3

- 3.1 The Contractor will submit an application for an SWK Warranty Certificate to the Insurer through SWK for the benefit of the Buyer within two weeks of the conclusion of the Contract, enclosing a copy of the Contract.
- 3.2 The Insurer will then issue an SWK Warranty Certificate to the Buyer within four weeks of receiving the application, provided that:
 - the building plan that includes the House or Individually Owned Unit has been accepted by the Insurer and is listed in the Register at the time the application is received; and
 - the Model Contract prescribed by the Insurer, with additions and/or amendments approved by the Insurer, has been used; and
 - any additional security required by the Insurer in relation to the building plan has been provided; and
 - there are no other impediments to certification in the opinion of SWK and the Insurer.The Insurer also reserves the right to wait until the suspensory conditions included in the Contract have been fulfilled before issuing the SWK Warranty Certificate.
A copy of the SWK Warranty Certificate will be sent to the Contractor.
- 3.3 If an application for the issue of an SWK Warranty Certificate is submitted before the conditions for issue set out in this Article have been met, a decision on the application will not be made until those conditions have been met. The SWK Warranty Certificate will then be issued to the Buyer within four weeks of the date on which those conditions are met.
- 3.4 The Insurer may reject the application if it is established that the conditions mentioned in this Article have not been or will not be met or that the Contractor is insolvent as defined in Article 11.2.
On the day that the Contractor becomes insolvent, the Houses and Individually Owned Units in the relevant Contractor's building plans for which the Insurer and/or SWK has not yet received an application for an SWK Warranty Certificate will be automatically removed from the Register.
- 3.5 The Insurer may also issue an SWK Warranty Certificate to the Buyer at the Buyer's request.
- 3.6 Once the SWK Warranty Certificate has been issued and the other conditions set out in this Regulation have been met, the Buyer has cover under the Insolvency Warranty and the Defects Warranty for the House or the Individually Owned Unit, as referred to in Section III.

SWK Warranty Certificate for the Owners' Association in relation to the Communal Areas

Article 4

- 4.1 The Contractor will submit an application for an SWK Warranty Certificate to the Insurer through SWK for the benefit of the Owners' Association within two weeks of the Handover of Communal Areas, enclosing a copy of the final Property Division Deed and a written statement of the Handover of Communal Areas, and the date of it, or a copy of the report of the Handover of Communal Areas.
- 4.2 The Insurer will then issue an SWK Warranty Certificate to the Owners' Association within four weeks of receiving the application, provided that the building plan that includes the Building has been accepted by the Insurer and is listed in the Register and, in addition, the Handover of Communal Areas has taken place. A copy of the SWK Warranty Certificate will be sent to the Contractor.

- 4.3 If an application for the issue of an SWK Warranty Certificate is submitted before the conditions for issue set out in this Article have been met, a decision on the application will not be made until those conditions have been met. The SWK Warranty Certificate will then be issued to the Owners' Association within four weeks of the date on which those conditions are met.
- 4.4 The Insurer may reject the application if it is established that the conditions mentioned in this Article have not been or will not be met or that the Contractor is insolvent as defined in Article 11.2.
- 4.5 The Insurer may also issue an SWK Warranty Certificate to the Owners' Association at the Owners' Association's request.
- 4.6 Once the SWK Warranty Certificate has been issued and the other conditions set out in this Regulation have been met, the Owners' Association has cover under the Defects Warranty for the Communal Areas, as referred to in Section III.
- 4.7 The Defects Warranty referred to in Article 4.6 is limited to the sum of the shares (fractions) in the common property which, according to the applicable Property Division Deed, are represented by the individual Condominiums for which an SWK Warranty Certificate has been issued to each of the individual Buyers pursuant to Article 3. If an SWK Warranty Certificate has not been issued for all the Condominiums in a common property, the SWK Warranty Certificate of the Owners' Association therefore covers a pro rata portion of the common property.

In case of a secondary division (*ondersplitsing*) into Condominiums, the cover of the warranty rights referred to in this Article is limited to the pro rata portion for which the sub-Owners' Association is required, pursuant to the deed of principal division into Condominiums (*akte van hoofdsplitsing*), to contribute to the costs of rectification of defects in the Communal Areas of the registered property, multiplied by the sum of the shares (fractions) in the sub-Owners' Association/s for which an SWK Warranty Certificate has been issued to the individual Buyers pursuant to Article 3 (all to the extent that, according to the provisions in the regulations of the principal division (*hoofdsplitsing*), the rectification costs are not payable by certain owners or by parties other than the owners).

When SWK accepts a building plan, the Insurer may limit the scope of the warranty for such building plan, and SWK may require the Contractor to notify the Guarantee Holder of this in writing.

Section II: The Contractor's Guarantee

Commencement of the SWK guarantee period

Article 5

House or Individually Owned Unit

- 5.1 As soon as possible, but no later than fourteen days after the Contractor has handed over a House or an Individually Owned Unit to which this Regulation applies, the Contractor will submit a written statement to the Insurer through SWK indicating the date of the Handover.
- 5.2 The SWK guarantee period commences three months after the Handover.
- 5.3 If the Handover date cannot be determined objectively, SWK will make a binding determination as to whether, and if so on what date, the guarantee period within the meaning of this Regulation has commenced.
- 5.4 If a House or an Individually Owned Unit for which there is as yet no known Buyer is ready for Handover, SWK will determine with binding force on what date the SWK guarantee period within the meaning of this Regulation will commence or has commenced. In principle, the SWK Guarantee commences three months after the House or Individually Owned Unit is ready for Handover. The Contractor can use a standard form (statement of date) to inform the Insurer (through SWK) of the date when a House or Individually Owned Unit is ready for Handover. Following the submission of this statement, the Insurer may inspect the House or Individually Owned Unit (or arrange for it to be inspected) and charge the Contractor for the costs of this inspection.

- 5.5 These statements and SWK's decision serve solely to establish the commencement date of the SWK guarantee period, meaning that they do not relieve the Contractor of responsibility, vis-à-vis either the Buyer or the Insurer, for the condition of the House or Individually Owned Unit.

Communal Areas

- 5.6 As soon as possible, but no later than fourteen days after the Handover of Communal Areas of the Building in which the Buyer has an ownership interest on the basis of his Condominium, the Contractor will submit a written statement of this to the Insurer through SWK indicating the date of that Handover.
- 5.7 In addition, all the provisions of Articles 5.2 to 5.5 must be complied with in order for the SWK Guarantee granted to the Owners' Association to take effect, with "Communal Areas" being substituted for "House" or "Individually Owned Unit" and "Owners' Association" for "Buyer". In applying Article 5.3 by analogy, the Insurer may assume that the Handover of Communal Areas is in any event deemed to have taken place two months after the last Individually Owned Unit in the Building for which an SWK Warranty Certificate has been issued is ready for Handover or has been handed over.

Guarantee, Guarantee Standards and guarantee period

Article 6

- 6.1 The Contractor guarantees the Guarantee Holder that the House or Individually Owned Unit and the Communal Areas comply with the Guarantee Standards set out below.
- 6.2 The Contractor guarantees the Guarantee Holder that, to the extent that this Regulation does not include any restrictions or limitations in this regard, the constructions, materials, parts and systems used are sound and suitable, under reasonably foreseeable external circumstances, for the purpose for which they are intended.
- 6.3 The House or Individually Owned Unit and the Communal Areas meet the applicable requirements of the Buildings Decree and/or the Bbl.
- 6.4 For experiments in the interests of public housing, the Insurer is authorized to accept the following at a Contractor's request: Houses, Individually Owned Units and Buildings and/or technical constructions coming under the scope of this SWK Guarantee and Warranty Regulation that depart from the technical requirements applicable under the SWK Guarantee and Warranty Regulation. The Insurer may make such acceptance conditional on conditions that ensure that the technical level in question is equivalent to the original requirement.
- 6.5 The Guarantee Supplement attached to this Regulation lists the SWK guarantee periods for various parts of the House, Individually Owned Unit and Communal Areas and exclusions from the SWK Guarantee (Module I), as well as any additional guarantee conditions (Modules II et seq). The legal relationship between the parties is governed by the version of the Guarantee Supplement referred to in the Plan Acceptance and the SWK Warranty Certificate.
- 6.6 The House, Individually Owned Unit and Communal Areas will have the layout agreed between the Contractor and the Buyer. The layout that has been or will be effected under the Contractor's responsibility will be in compliance with the applicable requirements of the Buildings Decree or Bbl.

The SWK Guarantee as a supplement to the Contract

Article 7

The rights and obligations under this SWK Guarantee and Warranty Regulation do not affect or limit the other rights and obligations that the Contractor and the Buyer have vis-à-vis each other pursuant to the Contract.

Request for rectification

Article 8

- 8.1 After discovering a technical or other defect covered by the SWK Guarantee, the Guarantee Holder must inform the Contractor in writing of this as soon as possible, within the applicable SWK guarantee period, requesting the Contractor to rectify the defect. The Contractor will notify the Guarantee Holder in writing within four weeks of the Guarantee Holder's request for rectification whether it acknowledges the defect under the SWK Guarantee and what

rectification works it will perform. The Guarantee Holder will allow the Contractor to investigate the defects that have been identified. If the Contractor acknowledges that the defect is covered under the guarantee, it will then carry out the rectification works within four weeks of the above-mentioned written notification. The Contractor will be in default (barring force majeure, holiday closure or weather conditions) if it fails to perform these obligations or fails to do so in a timely manner. The Guarantee Holder is obliged to provide the requisite cooperation to the Contractor when the Contractor carries out the rectification works (or arranges for the rectification works to be carried out).

- 8.2 If it subsequently transpires that the request for rectification was not based on a breach of a Guarantee Standard or of contractual liability under the Contract, the Contractor will be entitled to charge the Guarantee Holder €115.00 inclusive of VAT for inspections costs.
- 8.3 If, at the time of the request for rectification referred to in Article 8.1, the Guarantee Holder has not yet fully paid the Contractor the agreed land purchase price and/or Building Sum, including the balance of any Additional Work and contract reductions, any claims under this Regulation will be suspended until the Guarantee Holder has paid the outstanding amount. An exception to this will be made if the Guarantee Holder is entitled to suspend payment pursuant to the law or a contractual arrangement with the Contractor or if the Guarantee Holder's entitlement under the provisions of this Regulation cannot reasonably be denied. Any suspension of entitlements will not result in guarantee periods being extended. If it subsequently transpires that there was a breach of the SWK Guarantee during the period between the date of the Guarantee Holder's written notification of the defect to the Contractor and the date of rectification by the Contractor, the term of the SWK Guarantee will be deemed to have been extended by the duration of that period with respect to the aspect in question.
- 8.4 If the Contractor becomes insolvent, the Guarantee Holder must submit a request for rectification, accompanied by the necessary relevant information, directly to SWK.

Forfeiture of rights

Article 9

The Guarantee Holder may not invoke the SWK Guarantee outside the applicable SWK guarantee period, even if the Guarantee Holder can prove that the defect in question occurred within the applicable guarantee period.

Disputes between the Guarantee Holder and the Contractor

Article 10

- 10.1 The Guarantee Holder and the Contractor will endeavour to resolve any disputes concerning or arising out of this Regulation amicably. Either party may contact SWK with a request to mediate between them if required. SWK can also suggest mediation. If the Guarantee Holder and the Contractor are unable to resolve a dispute amicably, then the dispute settlement procedure referred to in Article 10.2 will apply between them.
- 10.2 All disputes between the Contractor and the Guarantee Holder concerning the SWK Guarantee and Warranty Regulation, including claims for performance, cancellation and compensation, will be settled by *De Geschillencommissie* in accordance with the Dispute Settlement Regulations of *De Geschillencommissie* as they read on the date when the dispute is submitted, subject to the following provisions.

The Guarantee Holder is always entitled to initiate proceedings before *De Geschillencommissie* or the ordinary courts. If the Contractor wishes to initiate proceedings, it must first send the Guarantee Holder a registered letter allowing him at least one month to notify the Contractor in writing whether he wants the dispute to be settled by *De Geschillencommissie* or by the ordinary courts. The Contractor is bound by the Guarantee Holder's choice in this regard. If the Guarantee Holder does not make a choice within the specified time limit, the Contractor will also be free to refer the dispute either to *De Geschillencommissie* or to the ordinary courts.
- 10.3 Any legal action with regard to a defect covered by the SWK Guarantee is not admissible if it is instituted more than three years after the end of the SWK guarantee period that applies to that defect, as stated in the Guarantee Supplement.

Section III: Insolvency Warranty and Defects Warranty

The Insolvency Warranty

Article 11

- 11.1 The Buyer will notify SWK in writing of the Contractor's insolvency as soon as possible but within fourteen days of becoming aware that the Contractor is insolvent.
- 11.2 Under this Regulation, insolvency includes solely the following:
- the Contractor's bankruptcy, a court-approved composition or a private composition with all or a majority of the Contractor's creditors;
 - the situation in which, in the sole opinion of the Insurer, sufficient facts and circumstances have been established showing that the Contractor has ceased making payments and/or is in a situation that in fact corresponds to the situation described in clause a.
- If a situation as referred to in clause a. or b. arises as a result of acts of war or similar occurrences (*molest*), it will not be regarded as insolvency within the meaning of this Regulation.
- Acts of war or similar occurrences are defined as described in the text filed with the Registry of the District Court of The Hague by the Dutch Association of Insurers (*Verbond van Verzekeraars*) on 2 November 1981.
- If that text is amended, the amended text will apply to cases for which the SWK Warranty Certificate is issued on or after the date on which the amended text takes effect.
- 11.3 If the Contractor defaults on its obligations under the Contract as a result of insolvency, the Buyer will be indemnified by the Insurer subject to the following terms and conditions. The Insurer may choose between the following options when paying indemnification:
- the Insurer makes an arrangement for completion of the construction with a construction company other than the Contractor and pays the costs incurred by the Buyer for completing the House or the Individually Owned Unit and the Building over and above the Building Sum specified in the original Contract;
 - the Insurer refunds the Buyer the instalments already paid by the Buyer to the Contractor under the Contract, plus statutory interest from the date of payment to the date when the amount is refunded in full.
- If the Insurer chooses option b., it will acquire ownership of the property purchased by the Buyer to the extent that the instalments already paid by the Buyer to the Contractor are repaid to the Buyer by the Insurer.
- 11.4 a. By signing the Contract, the Buyer irrevocably authorizes the Insurer, to the exclusion of any other party, to do the following for and on behalf of the Buyer in the event that the Contractor becomes insolvent: to address the consequences of the Contractor's insolvency, including conducting negotiations with the liquidator (*curator*) and making an arrangement for completion of the construction. In addition, the Insurer is entitled to take all such measures in relation to the House or Individually Owned Unit/Building under construction as the Insurer deems necessary or useful to limit or settle the loss or damage.
- 11.4 b. After the Contractor's insolvency has been disclosed, the Insurer will, on the Buyer's behalf, send the liquidator a written demand requesting confirmation of the completion of the House or Building, in accordance with the relevant provisions of the Dutch Bankruptcy and Insolvency Act (*Faillissementswet*). If such confirmation is not provided within the period stated in that demand, or if the liquidator issues a written notification that it will not fulfil the Contract, the indemnification arrangement set out in Article 11.3 will apply and the Buyer will be deemed to have invoked this Insolvency Warranty.
- 11.5 The Buyer is obliged to do the following, with the proviso that failure to do so will result in forfeiture of his right to indemnification:
- to provide the Insurer with all the requested information, documents and cooperation;
 - to provide all reasonable cooperation to calculate and settle the loss or damage;
 - to allow the Insurer or expert/s appointed by the Insurer access to the House or Individually Owned Unit/Building under construction upon request;
 - to immediately report any suspected criminal offence to the police;

e. to assign to the Insurer his claim against the Contractor under the Contract in respect of the loss or damage suffered and yet to be suffered.

If the Buyer has exercised the right to deposit 5% of the Building Sum with the notary at the time of the Handover on the basis of Section 768 in Book 7 of the Dutch Civil Code, or if the Contractor has provided equivalent security for the benefit of the Buyer, the Buyer will also be obliged (subject to forfeiting his right to indemnification) to assign to the Insurer any claim he has to such deposit or equivalent security in respect of the costs of rectification of Handover defects and/or issues of concern notified in the first three months after the Handover. At the Insurer's first request, the Buyer of a Condominium is also obliged to assign to the Insurer any claims against co-owners who do not hold an SWK Warranty Certificate.

These include demands to cooperate with the completion of the Building and to contribute financially to the costs of completing the Communal Areas, which are considered joint costs within the meaning of Section 112(1)(a) in conjunction with Section 122(3) in Book 5 of the Dutch Civil Code.

Offsettable claims as referred to in Article 11.12 are not assigned. The same applies to any subrogation of the Insurer to the Buyer's rights. Rights are not subrogated in the case of offsettable claims as referred to in Article 11.12.

If the Buyer does not, or does not fully, fulfil the obligations referred to in this Paragraph with the intention to deceive the Insurer, any right to indemnification will lapse unless this is not warranted by that deception.

- 11.6 If an Insurer makes an arrangement for completion of the House or Individually Owned Unit, the Buyer will be compensated, as part of the indemnification, in an amount equal to 0.025 percent of the Building Sum specified in the original Contract for each calendar day by which the Handover date is exceeded, up to a maximum of €75.00 per calendar day for up to 150 calendar days. However, this right is only enforceable with effect from the date on which the originally agreed number of workable days for the House or the Individually Owned Unit has been exceeded by 10% (the initial 10% will not be compensated). This compensation arrangement only applies to a House or an Individually Owned Unit that has not yet been handed over within the meaning of the Contract at the time that the Contractor becomes insolvent as described in Article 11.2.
- 11.7 The compensation referred to in Article 11.6 is calculated as follows. The baseline is the number of workable days originally agreed between the Contractor and the Buyer in the Contract, plus 10%. The table shown below is used to determine the deadline for the Handover of the House or Individually Owned Unit. Parts of a month are allocated pro rata. This compensation arrangement does not use the actual number of workable days, but rather the fixed number of workable days specified in the table.

<u>Month</u>	<u>workable days</u>
January	11
February	9
March	18
April	15
May	17
June	21
July	10
August	15
September	1
October	19
November	18
December	12

If the Handover date thus calculated (including the 10% overrun period) is exceeded, the Buyer will be entitled to the compensation referred to in Article 11.6. Any compensation for construction time overruns for which the Buyer could claim compensation from the completing party under the completion contract that applies between them will be deducted from the compensation described in Article 11.6.

- 11.8 If Article 11.3 applies, the maximum indemnification – including the compensation described in Article 11.6 – is 100% of the Building Sum (excluding the price of Additional Work not notified to the Insurer through SWK).
- 11.9 If the Buyer did not exercise his (statutory) right of suspension by depositing 5% of the Building Sum with the notary at the time of the Handover (on the basis of Section 768 in Book 7 of the Dutch Civil Code) and keeping it on deposit with the notary until the rectification of the defects covered by the right of suspension, an amount equal to the actual costs of rectifying these defects will be deducted from the indemnification referred to in Articles 11.3 and 11.8, but only up to 5% of the Building Sum. This provision does not apply if the Contractor has provided equivalent security of 5% of the Building Sum for the benefit of the Buyer in a timely manner, such as a bank guarantee, and the Buyer maintains that security until the defects covered by the right of suspension have been rectified.
- 11.10 The following payments made by the Buyer under the Contract or contracts resulting from it are at the Buyer's risk and expense and are not covered by the Insolvency Warranty:
- payments made prior to the unconditional notarial transfer of title;
 - payments made before the Contractor has carried out the work in question in the context of the instalment scheme agreed between the Contractor and the Buyer and approved by the Insurer;
 - payments made after the date of the Contractor's insolvency, unless the Insurer authorized them in writing beforehand.
- The following do not qualify for reimbursement either:
- discounts granted by the Contractor in connection with subsidies or payments by third parties. The Buyer himself must take the necessary measures to obtain and/or retain any subsidies;
 - the financial consequences of cancellation of the Contract without the Insurer's authorization.
- 11.11 In the event of an arrangement for completion of the construction on the basis of Article 11.3.a., the Insurer will again request the payments referred to in Article 11.10 from the Buyer. If the Insurer pays indemnification on the basis of Article 11.3.b., the aforementioned payments will be deducted from the amount payable to the Buyer by the Insurer.
- 11.12 The Insolvency Warranty does not apply to a House or Individually Owned Unit as referred to in Article 5.4. The Insolvency Warranty does not cover the following either:
- preparing for construction and residential use the site/s on which the House or Building has been/will be built or that pertain/s to the House or Building;
 - demolishing the structure/s that is/are present on the site/s on which the House or Building has been/will be built or that pertain/s to the House or Building;
 - remediating the site/s on which the House or Building has been/will be built or that pertain/s to the House or Building;
 - creating and upgrading green areas, except if and to the extent that the green areas are functional and are inseparable from the House or Building;
 - building and upgrading infrastructural facilities;
 - building and upgrading all other facilities outside the House or Building;
 - any additional costs incurred by the Buyer as a result of an adjustment to the VAT rate by the government between the date of conclusion of the Contract and the Handover.
- If the Buyer has claims that can be set off against any outstanding claims of a bankrupt Contractor, the Insurer will set off such claims of the Buyer against the bankrupt Contractor's outstanding claims on behalf of the Buyer. Such offsettable claims are explicitly not covered by the Insolvency Warranty.
- 11.13 Only the Buyer may invoke the Insolvency Warranty. The Owners' Association has no recourse to the Insolvency Warranty.
- 11.14 If the Contractor becomes insolvent as described in Article 11.2 prior to the unconditional notarial transfer of title, the Insolvency Warranty and the Defects Warranty will cease to have effect.

The Defects Warranty

Article 12

In case of a House or an Individually Owned Unit

12.1 The Guarantee Holder is obliged to provide the Contractor with the requisite cooperation as regards the enforcement of the arbitral award issued by *De Geschillencommissie* pursuant to this Regulation. If the Contractor fails to comply with the arbitral award issued by *De Geschillencommissie* pursuant to this Regulation, the Insurer will, at the Guarantee Holder's first request in writing, carry out the work which the Contractor was ordered to carry out insofar as the award relates to the breach of a Guarantee Standard, with the proviso that, after the Guarantee Holder has submitted a claim to the Insurer under the Defects Warranty, the Contractor will have a final opportunity to carry out the work it has been ordered to carry out in accordance with the provisions of this Article.

A conditional penalty (*dwangsom*) imposed in the award issued by *De Geschillencommissie* is not covered by the Defects Warranty. Only an award issued by *De Geschillencommissie* may serve as the basis for a claim under the Defects Warranty. No claim is available under the Defects Warranty on the basis of a judgment issued by an ordinary court.

If the arbitral award specifies a period within which it must be complied with, the Contractor will be in default by operation of law if it exceeds that period. If the arbitral award does not specify a period, the Contractor will only be in default after the Guarantee Holder has issued it with a notice of default granting it a reasonable period to perform.

If the Insurer opts to provide compensation in kind instead of paying the rectification costs (as referred to in Article 12.3), the Insurer will engage a construction company other than the Contractor to carry out the aforesaid work, at the Contractor's expense. To ensure payment of the costs incurred in this regard, the Contractor will provide the Insurer with security in the form of a bank guarantee.

The Insurer will not engage a construction company other than the Contractor if the Contractor submits a rectification plan to the Insurer through SWK within six weeks of the Guarantee Holder having invoked the Defects Warranty and the Insurer confirms in writing within six weeks of receiving it that it considers the rectification plan sufficient for carrying out the work referred to above. The Contractor is obliged to implement the rectification plan within the rectification period stipulated by the Insurer. If warranted by the complexity of the rectification plan, the Insurer may apply a longer period than the six-week period referred to.

12.2 If the Contractor becomes insolvent (as referred to in Article 11.2) after the guarantee period commences, the Guarantee Holder may submit a claim to the Insurer through SWK for fulfilment of the SWK Guarantee. In that case, the Guarantee Holder's claim will be subject to an excess of €300.00 inclusive of VAT per guarantee year. After receiving the amount due, the Insurer will process the claim for fulfilment of the SWK Guarantee. The provisions of Article 11.5 apply by analogy.

If the Contractor becomes insolvent after the guarantee period commences without having rectified Handover defects and/or issues of concern within the meaning of the statutory right of suspension, and if those Handover defects and/or issues of concern are in breach of the SWK Guarantee, the Insurer may, at the Guarantee Holder's request, arrange for such defects to be rectified within the scope of the SWK Guarantee, provided that the Guarantee Holder notifies the Insurer through SWK within the applicable SWK guarantee period and that the Guarantee Holder assigns the deposit or equivalent security in respect of the rectification costs to the Insurer in accordance with Article 11.5. If the Guarantee Holder has not maintained the deposit or equivalent security with regard to the defects that have not yet been rectified and that are covered by the right of suspension, the rectification costs referred to above will be at the expense and risk of the Guarantee Holder up to an amount not exceeding 5% of the Building Sum.

If the Guarantee Holder himself takes care of the rectification of the aforementioned Handover defects and/or issues of concern, such Handover defects and/or issues of concern and their rectification will not be covered under the Defects Warranty, unless the Insurer, after assessing the rectification or the rectification plan, confirms in writing that the rectification meets the requirements of the SWK Guarantee and is or will be carried out by a reputable contractor.

- 12.3 In both of the aforementioned cases, the Insurer will have the option, to the extent applicable, either to provide compensation in kind or to reimburse the Buyer for the rectification costs, against discharge in full and indemnification against further claims for rectification or compensation. If the Guarantee Holder or the Contractor claims that the Insurer has not correctly performed its obligations under the invoked Defects Warranty, the Guarantee Holder or the Contractor must demonstrate, as regards the SWK Guarantee, that the way in which those obligations have been performed does not do justice to the arbitral award of *De Geschillencommissie*.
- 12.4 The Insurer's warranty under this Article does not exceed the SWK Guarantee and is in any case limited to a maximum of €140,000.00 inclusive of VAT (2024 = 100) per House for the entire guarantee period. This amount is adjusted annually for new SWK Warranty Certificates in line with the consumer price index (CPI) for all households published by Statistics Netherlands (*CBS*), with the proviso that the amounts applicable to the Guarantee Holder upon issue of an SWK Warranty Certificate remain unaltered throughout the validity of the warranty.
- 12.5 Only the following costs also qualify for reimbursement within the limit mentioned in the preceding Paragraph:
- losses directly resulting from rectification works carried out under the Defects Warranty;
 - costs that are an unavoidable consequence of the fulfilment of the Defects Warranty, provided that they are incurred after the Insurer has authorized them in writing. Examples are costs of alternative accommodation, the vacating of premises, temporary storage and putting back home contents etc.
- 12.6 The warranty may not (or no longer) be invoked as referred to in this Article in the following circumstances:
- in the event of a judgment issued by an ordinary court;
 - if, within two years of a request for rectification submitted to the Contractor, the Guarantee Holder has not initiated arbitral proceedings before *De Geschillencommissie* and has not submitted a claim to the Insurer through SWK for fulfilment of the SWK Guarantee in accordance with Article 12.2;
 - while an appeal is still available against an award issued by *De Geschillencommissie* at first instance;
 - while an appeal against an award (or part of an award) issued by *De Geschillencommissie* at first instance is still pending and such appeal relates to an order in respect of a breach of a Guarantee Standard;
 - if the Guarantee Holder has not invoked the warranty in writing within one year of the expiry of the rectification period specified in the award of *De Geschillencommissie* or, if that award does not specify a rectification period, within one year of the date of the arbitral award issued by *De Geschillencommissie* at first instance or on appeal.

In case of an Individually Owned Unit.

- 12.7 In case of an Individually Owned Unit, Articles 12.1 to 12.6 apply by analogy, with the proviso that the maximum warranty amount as referred to in Article 12.4 is €21,000.00 inclusive of VAT.

In case of Communal Areas

- 12.8 In case of Communal Areas, Articles 12.1 to 12.6 apply by analogy, with the proviso that the maximum warranty amount as referred to in Article 12.4 is €119,000.00 inclusive of VAT multiplied by the number of Individually Owned Units in the Building for which an SWK Warranty Certificate has been issued. The excess referred to in Article 12.2 is €600.00 including VAT.
- 12.9 If the Insurer sees reason for this with regard to a particular Building, the Insurer may determine for that Building, or parts of it, the ratio in which the Buyer, on the basis of his Individually Owned Unit, and the Owners' Association, on the basis of the Communal Areas, participate in the reference amount referred to in Articles 12.7 and 12.8, which will result in a change to the maximum amounts specified in those Articles. In that case, the SWK Warranty Certificate will indicate the maximum applicable to that certificate.

- 12.10 If the Defects Warranty is invoked in relation to the Communal Areas, the share allocated to the Owners' Association pursuant to Article 4.7 will always be redetermined subject to and in accordance with the final Property Division Deed.
- 12.11 If the Owners' Association validly invokes the Defects Warranty within the meaning of this Regulation, the Insurer will, if it opts to provide compensation in kind pursuant to Article 12.3, arrange for rectification of the defect/s after the Owners' Association has deposited into the Insurer's account the share of the loss amount not included in the pro rata cover provided by that warranty. The Owners' Association may recover this amount from the individual members of the Owners' Association who do not hold an SWK Warranty Certificate.
- 12.12 If the Insurer opts for compensation in kind and a majority of the individual Owners' Association members do not agree to the Insurer's intended completion of the Building or rectification, or if the amount referred to in Article 12.11 has not been deposited within the payment period set by the Insurer, the Insurer will be entitled to reimburse the Guarantee Holder for the completion costs or rectification costs in accordance with the pro rata cover provided by the warranty against discharge in full.

Section IV: Other provisions

Passing of the Buyer's rights under this Regulation and the SWK Warranty Certificate

Article 13

- 13.1 The SWK guarantees and warranties referred to in this Regulation are considered qualitative rights as referred to in Section 251(1) in Book 6 of the Dutch Civil Code. This means that the SWK guarantee and warranty rights under this Regulation pass to the successor Buyer by operation of law when the notarial deed of transfer of title to the House or Condominium is executed, on condition that the Buyer meets the definition of this term given above in this Regulation. When invoking this Regulation, the Buyer must be able to prove upon request that he is the owner of the House or Condominium.
- Section 251(1) in Book 6 of the Dutch Civil Code reads as follows:
"A contractual right capable of transmission which is so closely linked to certain property belonging to a creditor that he has an interest in that right only as long as he retains that property, will pass to the person who acquires that property by particular title."
- 13.2 If the Guarantee Holder has agreed an arrangement with the Contractor and the Contractor has not rectified defects to the House or Individually Owned Unit covered by that arrangement but has rather paid a sum in compensation in lieu of rectification, the successor Buyer will be bound by this arrangement and financial settlement. This means that the successor Buyer cannot require the Contractor or the Insurer to rectify these defects and cannot invoke the warranty in this regard.

Disputes between the Insurer/SWK and the Guarantee Holder

Article 14

- 14.1 The Guarantee Holder and the Insurer/SWK will endeavour to resolve any disputes concerning or arising out of this Regulation amicably. If the Guarantee Holder and the Insurer/SWK are unable to resolve a dispute amicably, the dispute settlement procedure referred to in Article 14.2 will apply between them.
- 14.2 All disputes between the Insurer/SWK and the Guarantee Holder concerning the SWK Guarantee and Warranty Regulation, including claims for performance, cancellation and compensation, will be settled by *De Geschillencommissie* in accordance with the Dispute Settlement Regulations of *De Geschillencommissie* as they read on the date when the dispute is submitted, subject to the following provisions.
- The Guarantee Holder is always entitled to initiate proceedings before *De Geschillencommissie* or the ordinary courts. If the Insurer/SWK wishes to initiate proceedings, it must first send the Guarantee Holder a registered letter allowing him at least one month to indicate in writing whether he wants the dispute to be settled by *De Geschillencommissie* or by the ordinary courts. The Insurer/SWK is bound by the Guarantee Holder's choice in this regard. If the Guarantee

Holder does not make a choice within the specified time limit, the Insurer/SWK will also be free to refer the dispute either to *De Geschillencommissie* or to the ordinary courts.

Effective date

Article 15

This regulation enters into force on 1 January 2024 and applies solely to Houses, Individually Owned Units and Communal Areas the plans for which are submitted to the Insurer through SWK on or after 1 January 2024.

Part 4

Notes to the SWK Guarantee and Warranty Regulation 2024

These notes pertain to the SWK Guarantee and Warranty Regulation 2024.

They explain each Article of the SWK Guarantee and Warranty Regulation 2024. The Regulation deals with both Houses and Condominiums.

Guarantee Supplement

The content of the Guarantee Supplement declared applicable in this Regulation depends on the state of the art and current thinking on building regulations. This means that the content of the Guarantee Supplement is subject to change. It is important to know which version of the Guarantee Supplement is declared applicable in the land purchase and/or building contract. Inserted as a loose sheet into the brochure, the Guarantee Supplement is broken down into modules listing guarantee periods, guarantee exclusions and any additional guarantee conditions. The various versions of the modules of the Guarantee Supplement are available on SWK's website (www.swk.nl).

Definitions

The Regulation begins with a number of definitions, the content of which is largely self-explanatory. Only the definition of Contractor needs some clarification. The Contractor, which is obliged to provide a guarantee, is named in the SWK Warranty Certificate and may be a participant in SWK or a party registered with SWK for a single plan or just a few of them. This registration is effected when SWK, the party in question and the participant in SWK that submits the plan/s to SWK sign what is known as a 'third-party contract'.

Article 1 General provisions

Under this Article, the Contractor is obliged to construct the House/Individually Owned Unit/Building in accordance with the Guarantee Standards. It also notes that the Insurer provides insurance cover under the Insolvency Warranty and the Defects Warranty.

Article 2 Applicability of this Regulation

This Article defines the scope of the Regulation and sets out some exceptions to the Regulation. SWK and the Insurer may or may not include certain categories of Houses, Individually Owned Units and Buildings under the SWK Regulation.

Article 3 SWK Warranty Certificate for the Buyer in relation to a House or Individually Owned Unit

Article 3 describes how the Buyer of an SWK home can obtain an SWK Warranty Certificate. The Buyer is entitled to an SWK Warranty Certificate if SWK has accepted the building plan in question and a Contract approved by SWK, including any departures from and/or additions to it, has been concluded between the parties. The Contract is concluded when the Contractor and the Buyer have both signed it and any applicable suspensory conditions have all been fulfilled.

The SWK Warranty Certificate obtained by the Buyer is a certificate of insurance which enables the Buyer to invoke the Insolvency Warranty and the Defects Warranty. If the issue of an SWK Warranty Certificate is refused, the Buyer and the Contractor will be informed accordingly, with the reasons for this.

Article 4 SWK Warranty Certificate for the Owners' Association in relation to the Communal Areas

Article 4 describes how the Owners' Association can obtain an SWK Warranty Certificate for the Communal Areas. The Owners' Association is entitled to an SWK Warranty Certificate if SWK has accepted the building plan in question and the Handover of the Communal Areas has taken place. The SWK Warranty Certificate obtained by the Owners' Association offers a warranty, up to a certain maximum, in the event that the Contractor does not meet its obligations. This warranty is described in Article 12. Article 4.7 specifies that there is limited cover for the Communal Areas if an SWK Warranty Certificate is not issued for all Individually Owned Units in a particular Building. If the

issue of an SWK Warranty Certificate is refused, the Owners' Association and the Contractor will be informed accordingly, with the reasons for this.

Article 5 Commencement of the SWK guarantee period

Article 5 provides that, in principle, the guarantee period for a House or Individually Owned Unit starts three months after the Handover. The Contractor must notify SWK of the Handover within 14 days of its occurrence. If this notification is not given (or is not given in a timely manner), or if it is incorrect or incomplete, SWK will determine the commencement date of the SWK Guarantee with binding force.

It is possible that a House is ready for Handover but has not yet been sold. The Contractor can notify SWK of this by means of a 'statement of date'. SWK then determines the commencement date of the SWK Guarantee with binding force. In principle, this is three months after the date when the House is ready for Handover, as notified by the Contractor. This is also possible for the Individually Owned Units and the Communal Areas of an apartment building. Consequently, if such a home is sold and handed over to a Buyer at a later point in time, part of the SWK guarantee period will already have elapsed.

Article 6 Guarantee, Guarantee Standards and guarantee period

The SWK Guarantee applies to the constructions, materials, parts and systems provided, supplied or delivered under the Contractor's responsibility. The Insolvency Warranty and the Defects Warranty do not go beyond the scope of the SWK Guarantee for which the Contractor bears responsibility to the Guarantee Holder under the Contract and the Regulation.

The Contractor guarantees the Guarantee Holder that the House/Individually Owned Unit/Building (including Additional Work) will comply with the following Guarantee Standards:

- the constructions, materials, parts and systems used are – under normal circumstances – sound and suitable for the purpose for which they are intended insofar as the SWK Guarantee and Warranty Regulation does not include any limitations;
- the Buildings Decree and/or Bbl requirements;
- the House or the Individually Owned Unit and Communal Areas will have the layout agreed between the parties.

Buildings Decree and/or Bbl requirements

In case of a new build project, the House/the Individually Owned Unit/the Building is in compliance with the Buildings Decree and/or Bbl requirements for new buildings. In case of renewal construction, the Buildings Decree and/or Bbl requirements for conversions apply. In case of renewal construction, it is standard for the Contractor to guarantee that the House/the Individually Owned Unit/the Building is in compliance with the current regulatory quality level, the minimum being the quality level for existing buildings. This quality level can be combined with the quality level for new buildings in case of renewal construction. A Contract for renewal construction may stipulate the quality level that applies to specific parts of the House/the Individually Owned Unit/the Building.

Guarantee Supplement

The Guarantee Supplement lists guarantee periods, guarantee exclusions (Module I) and any additional guarantee conditions (Modules II, etc.).

Guarantee periods

The guarantee period is generally six years. A 10-year guarantee period applies to serious structural defects that compromise habitability. Shorter guarantee periods are mentioned for certain parts.

Guarantee exclusions

There are a number of items and aspects that are not covered by the SWK Guarantee. These are therefore not covered by the Defects Warranty either. In a nutshell, the main items and aspects that fall outside the scope of the SWK Guarantee are:

- disputes arising from the land purchase and/or building contract, including plot size, the instalment scheme, payment obligations, construction time, the 5% regulation and delivery disputes;

- aesthetic issues;
- defects resulting from work undertaken by the Guarantee Holder or by third parties, layout changes or incorrect maintenance;
- loss or damage resulting from storms, fire, flooding, drifting and blowing snow, etc;
- facilities outside the House or Building such as drainage, paving, raised garden areas, plot separation, garden walls etc;
- glass panes, except for the insulating effect of double-glazing;
- wall finishes other than plastering, tiling and paintwork;
- normal discolouration, surface weathering and staining of materials.

Consequential loss or damage

In the event of consequential loss or damage as a result of a defect covered by guarantee, the Guarantee Holder may be able to claim compensation from the Contractor based on the current value. Most policies issued by home contents insurers offer wider cover based on the new-for-old value.

Limited SWK Guarantee and Warranty Regulation

In instances where the desire for contract reductions is in conflict with the Buildings Decree and/or Bbl requirements, the parties may nevertheless voluntarily agree not to have certain components of the home built or installed. This is not provided for by the Model Contract. The responsibility to ensure that the home is in compliance with the Buildings Decree and/or Bbl requirements as regards the components that are not built or installed will then shift from the Contractor to the Buyer.

The parties must agree on the applicability of this 'limited SWK Guarantee and Warranty Regulation' in writing. They must clearly agree what will not be built or installed by the Contractor and what consequences this will have for the division of liability between the parties. The Buyer will bear the risk and expense of anything not built or installed by the Contractor. It is of course obvious that this is not covered by the SWK Guarantee (nor, therefore, by the Defects Warranty). The Buyer also bears the risk and expense of any loss or damage resulting from the Buyer's own work.

The Contractor cannot be required to offer this limited SWK Guarantee and Warranty Regulation. It does so strictly voluntarily.

Article 7 The SWK Guarantee as a supplement to the Contract

It is evident from Article 7 that the SWK Guarantee does not replace other arrangements made between the Buyer and Contractor in the standard Contract, but is rather a supplement to those arrangements. The SWK Guarantee can be regarded as an 'extra' over and above the rights and obligations that the Contractor and Buyer have to each other under the Contract.

Article 8 Request for rectification

If the SWK Guarantee is invoked, the procedure described in Article 8 must be followed. Defects must always be notified in writing to the Contractor named in the SWK Warranty Certificate within the applicable SWK guarantee period (see Module I of the Guarantee Supplement).

After receiving a written complaint, the Contractor must notify the Guarantee Holder in writing within four weeks whether it acknowledges that the defect is covered under the SWK Guarantee and what rectification works it will undertake. The Guarantee Holder is obliged to allow the Contractor to investigate the defects. If the Contractor acknowledges that the defect is covered under the SWK Guarantee, it must carry out the rectification works within four weeks of the aforementioned written notification.

The Guarantee Holder must not obstruct the rectification works. Afterwards, the Contractor may charge the Guarantee Holder €115.00 inclusive of VAT for inspection costs if the Contractor is not liable under the SWK Guarantee and Warranty Regulation or the land purchase and/or building contract.

The term of the SWK Guarantee will be extended by the period during which a component is not in compliance with the SWK Guarantee. This period runs from the time when the Guarantee Holder notifies the Contractor in writing of the defect covered by the SWK Guarantee to the time when the defect is rectified by the Contractor.

If the Contractor acknowledges that a defect is covered under the SWK Guarantee, the Guarantee Holder and the Contractor may agree in writing that the Contractor will pay financial compensation rather than rectify the defect. This could be a way of resolving situations in which rectification is not possible or desired. Once compensation has been paid, the defect in question is no longer covered under the SWK Guarantee and warranty. This also applies to the successor Guarantee Holder in the event of a resale.

Article 9 Forfeiture of rights

The right to submit claims is forfeited if no claims are submitted in writing within the applicable SWK guarantee period.

Article 10 Disputes between the Guarantee Holder and the Contractor

The parties will endeavour to resolve any disputes amicably. If they do not succeed, SWK can mediate if required. If necessary, disputes under the SWK Guarantee and Warranty Regulation can be settled by arbitral proceedings before *De Geschillencommissie* or by legal proceedings before the ordinary courts.

The Guarantee Holder may choose between *De Geschillencommissie* and the ordinary courts when initiating proceedings. An arbitral award issued by *De Geschillencommissie* may be appealed under the conditions mentioned in the Dispute Settlement Regulations of *De Geschillencommissie*.

In principle, a judgment of the ordinary courts may also be appealed. It is important to note here that only an award issued by *De Geschillencommissie* can serve as the basis for a claim under SWK's Defects Warranty. Accordingly, no claim is available under the Defects Warranty on the basis of a judgment issued by an ordinary court.

Claims regarding defects covered by guarantee may be submitted to *De Geschillencommissie* up to three years after the end of the SWK guarantee period for the defect in question. After that, any guarantee claims by the Guarantee Holder will not be accepted.

Further details about proceedings before *De Geschillencommissie* can be found on www.degeschillencommissie.nl.

Article 11 The Insolvency Warranty

As soon as the Buyer becomes aware that the Contractor is unable to perform its obligations due to insolvency (bankruptcy, court protection from creditors, etc.), the Insurer or SWK must be notified of this in writing. The Buyer must also provide the Insurer and SWK with all cooperation in settling the matter. The Insurer is irrevocably authorized by the Buyer to limit and settle the loss or damage.

The Insurer will, at its own discretion, indemnify the Buyer either on the basis of the amount of the additional payment to be made to a Contractor that completes the construction or on the basis of the instalments already paid. If the Insurer makes an arrangement for completion of the construction, the Buyer is also entitled to compensation for any delay in the Handover (up to a maximum of 150 calendar days) if the number of workable days originally agreed has been overrun by 10% (i.e. the first 10% are not compensated). The maximum indemnification is 100% of the agreed Building Sum. If the statutory right of suspension has not been correctly exercised, this may result in a deduction of up to 5% of the Building Sum from the indemnification. This could be the case if, for example, the Buyer releases the deposit despite the fact that Handover defects or other defects still need to be rectified, or if the Contractor announces that it will provide equivalent security in the form of a bank guarantee instead of the deposit with the notary and the Buyer fails to check with the notary prior to the Handover whether the bank guarantee has in fact been provided. The Insolvency Warranty may be invoked only from the date of the notarial transfer of title (i.e. the transfer of ownership before the notary). Certain payments are not covered by the Insolvency Warranty. These are payments made prior to the notarial transfer of title and payments made before the Contractor has carried out the work in question in the context of the instalment scheme approved by the Insurer. Payments not approved by the Insurer that are made after the date of the Contractor's insolvency are also excluded from the Insolvency Warranty.

The Insolvency Warranty does not apply to a House or Individually Owned Unit sold after the date when it is ready for Handover. The work and the claims referred to in Article 11.12 are also excluded

from the Insolvency Warranty. Finally, it is important to note that the Owners' Association has no recourse to the Insolvency Warranty.

Article 12 The Defects Warranty

The Insurer assures the implementation of the SWK Guarantee provided by the Contractor to the Guarantee Holder. The contractual guarantee provided by the Contractor to the Guarantee Holder under the Contract is not covered by the Defects Warranty. Article 12.1 deals with the Defects Warranty in the event that the Contractor does not comply with the arbitral award of *De Geschillencommissie* or does not do so on time, while Article 12.2 deals with the Defects Warranty in the event that the Contractor becomes insolvent after the start of the guarantee period.

The Guarantee Holder may not obstruct the enforcement of an award issued by *De Geschillencommissie* or of a judgment issued by an ordinary court. If the Contractor does not perform its rectification and/or compensation obligations pursuant to an award issued by the arbitrator of *De Geschillencommissie* based on a breach of the SWK Guarantee, or does not do so on time, the Guarantee Holder may invoke the Defects Warranty by notifying SWK in writing. This is not subject to an excess. The Insurer will ensure compliance with the obligations specified in the arbitral award insofar as the order contained in it relates to a breach of a Guarantee Standard. Any conditional penalty (*dwangsom*) is not covered by the Defects Warranty.

If there is a construction defect, the arbitrator of *De Geschillencommissie* will automatically indicate in the award whether, and if so to what extent, it constitutes a breach of a Guarantee Standard. The arbitrator is obliged to do so under the Dispute Settlement Regulations of *De Geschillencommissie*. The ordinary courts are not bound by these Dispute Settlement Regulations. Consequently, in the event of a construction defect they are not required to automatically assess whether, and if so to what extent, a Guarantee Standard has been breached. A judgment by an ordinary court cannot serve as the basis for a claim under the Defects Warranty. If the Contractor becomes insolvent after the start of the guarantee period, the Guarantee Holder must contact SWK. If the Defects Warranty is invoked in the event of insolvency, an excess of €300 inclusive of VAT applies to the Buyer, and €600 inclusive of VAT applies to the Owners' Association, for each guarantee year.

The Defects Warranty is capped at €140,000.00 inclusive of VAT (2024 price level with annual indexation) per House for the entire SWK guarantee period. A maximum of €21,000.00 inclusive of VAT (price level 2024 with annual indexation) applies to an Individually Owned Unit in an apartment building. For the Communal Areas of an apartment building, a maximum of €119,000.00 inclusive of VAT applies (price level 2024 with annual indexation), multiplied by the number of Individually Owned Units in the Building for which an SWK Warranty Certificate has been issued. These amounts are indexed annually for new SWK Warranty Certificates. Otherwise, the applicable amounts are fixed for the duration of the warranty.

Within specified limits and under specified conditions, some costs explicitly referred to in Article 12.5 may also qualify for reimbursement. It is important to note the differences between Articles 9, 10.3 and 12.6 in this regard. According to Article 9, the Guarantee Holder may invoke the SWK Guarantee only within the applicable guarantee period. According to Article 10.3, claims for the rectification of guarantee defects may be submitted to *De Geschillencommissie* up to three years after the SWK guarantee period for the defect in question ends. Article 12.6 specifies when rights under the Defects Warranty lapse.

The Contractor is obliged to reimburse the Insurer for the costs incurred by or on behalf of the Insurer in connection with the implementation of the Defects Warranty. If a third-party contract is used, the SWK participant who has submitted the plan or plans to SWK is also obliged to reimburse these costs to the Insurer.

Article 13 Passing of the Buyer's rights under this Regulation and the SWK Warranty Certificate
If ownership of the home is transferred, the SWK Guarantee and warranties pass to the successor owner by operation of law. When invoking the guarantee and warranties, the successor owner will have to prove that he is the owner of a home covered by an SWK Guarantee and that he is acting within the applicable guarantee periods. The successor owner must meet the definition of 'Buyer' given in the SWK Guarantee and Warranty Regulation.

It sometimes happens that the first owner has entered into an arrangement with the Contractor in which the latter has paid a sum of money by way of compensation for defects in the home. If so, the successor owner is bound by that arrangement. In that case, he or she therefore cannot require the Contractor to rectify the defects in question. The SWK Guarantee and warranty cannot be invoked in that situation either with respect to such defects, as those rights have been forfeited by payment of the sum of money.

Article 14 Disputes between the Insurer/SWK and the Guarantee Holder

The parties will endeavour to resolve any disputes amicably. If necessary, disputes about the implementation of the SWK Guarantee and Warranty Regulation, including disputes about the fulfilment of the warranties, can be settled by arbitral proceedings before *De Geschillencommissie* or by proceedings before the ordinary courts. An arbitral award issued by *De Geschillencommissie* may be appealed under the conditions mentioned in the Dispute Settlement Regulations. In principle, a judgment of the ordinary courts may also be appealed. As noted, consumers may choose between *De Geschillencommissie* and the ordinary courts when initiating proceedings.

Further details about proceedings before *De Geschillencommissie* can be found on www.degeschillencommissie.nl.

Article 15 Effective date

Article 15 states the effective date of the Regulation.

Personal data processing

SWK processes the personal data required for issuing an SWK Warranty Certificate and implementing the SWK Regulation in accordance with the General Data Protection Regulation. SWK shares this data with the Insurer to the extent that this is necessary for the purposes of this Regulation. The privacy statement on SWK's website includes information on SWK's processing of personal data.

SWK • T +31 (0)10 411 16 74 • www.swk.nl • mail@swk.nl