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ABSTRACT:

Just because a manufacturer offers a warranty, are you certain the specifications should require the warranty? There are many factors to consider that affect the Owner's rights and remedies for correcting work completed under a construction contract. Before specifying a warranty, understand its potential impact.

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KEYWORDS:

Warranty, Limited Warranty, Extended Warranty, Contractor Warranty, Correction Period, Substantial Completion, Uniform Commercial Code

REFERENCES:

AIA A201 - General Conditions of the Contract for Construction
CSI Construction Specifications Practice Guide

Warranty & Correction Period

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Background

Specifications commonly require product and equipment warranties. The warranties may be required of the manufacturer (materials), the installer (labor), or both. The warranty periods vary - generally ranging from one year to lifetime and everything between.

When manufacturers and installers write warranties, they are limited or exclusive warranties. The warranty limits or excludes responsibilities of the entity issuing the warranty, excluding conditions beyond the entity's control - acts of God, riots, and war, among other things.



Owners, Architects, and Engineers tend to request warranties for products and systems when the manufacturer's literature states that warranties are available. Are warranties really protecting the Owner's investment and providing value beyond the construction contract?

The UCC

The Uniform Commercial Code (UCC) applies to the sale of goods in every state, except Louisiana. The

UCC requires products be furnished with a "full warranty" for performance that includes labor and materials for replacement. Most manufacturers are unwilling to assume the risk for a full warranty because of the cost and because they have no control over how a product will be put to use.

The UCC allows a buyer and seller to agree to a limited warranty with reduced remedies. In construction there is rarely negotiation to determine the warranty. Instead the manufacturer simply incorporates a limited warranty as part of the terms of sale, unless otherwise specified.

Purpose

Warranties may be specified for many reasons. Aside from the obvious perceived protection against defects, the two most important are:

- To extend the manufacturer's responsibility beyond the Correction Period required by the contract.
- To permit remedy beyond the statute of limitations and repose.

There are two key words above: "extend" and "beyond." Manufacturer limited warranties that provide coverage during the Contractor's Warranty Period and Correction Period may hinder the Owner's remedies. The warranty limitations accepted by the Owner may prevent corrections that would otherwise be enforceable on the Contractor as contractual obligations.

Extended warranties - those that are longer than the Contractor's Warranty Period and the Correction Period -



may be beneficial. The manufacturer must be financially able to support the warranty and the Owner must consider the value added to be worth the cost.

See B3010 Single-Ply Roofing Membranes for discussion of roofing warranties.

Contractor Warranty

AIA A201 requires the Contractor to provide a warranty for the materials and equipment. This warranty typically begins at Substantial Completion (See § 9.8.4). The warranty period is governed by the shorter of the applicable statute of limitations or repose, and phases matter.
§ 3.5 WARRANTY

The **Contractor warrants** to the Owner and Architect that **materials and equipment** furnished under the Contract will be of **good quality and new** unless the Contract Documents require or permit otherwise. The **Contractor further warrants** that the **Work will conform to** the requirements of the **Contract Documents and will be free from defects**, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not

conforming to these requirements may be considered defective. The **Contractor's warranty excludes** remedy for damage or defect caused by **abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage**. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Correction Period

AIA A201 also requires a one-year Correction Period that begins at Substantial Completion. The Correction Period is in addition to the warranty above. Simply, if work is determined to be defective (not meeting contract requirements) within one year, the Contractor must fix it.
§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition.

Conclusion

Talk to the Owner at the start of the project. The Owner's legal rights are at stake. Determine what protection is required and what the Owner is willing to pay.

Just like insurance, Architects should avoid deciding warranty terms and conditions. Warranties are complicated. Terms are often negotiable, for a fee, of course. Applicable statutes, the negotiated terms and conditions, and the construction contract all affect the Owner's rights and potential remedies. Be cautious about accepting limited warranty submittals, especially when no warranty was specified. Strictly enforce submittals for every specified warranty. Ensure the warranty start date, is the date of Substantial Completion.

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