

## **Warranty Period Procedures**

This document outlines the procedures for the warranty period after project acceptance by the Office of the State Engineer and Campus Representative pursuant to General Conditions 6.4 and 15.2 and any other Contractor's Workmanship/Materials warranties required by the Specifications and shop drawings. During the one year warranty period, the Contractor guarantees and warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the contract documents. Please keep in mind that the first year warranty is for workmanship and material failures. For example, a roof EPDM membrane bubbling after 4 months is a blatant defect and must be remedied by the prime contractor. Light bulbs burning out after 4 months are not covered under a warranty. The first year after substantial completion is the responsibility of the prime contractor. Even if a sub-contractor performed the work, the prime is still the one held responsible for any warranty claims. After the one-year warranty, there may still be a material warranty provided by the individual manufacturer. For example, most roof membranes carry a 20 year (+) manufacturer warranty. Most door handles have a seven-year manufacturer warranty, etc. It is important to always check the O&M manuals for any manufacturer warranties past the first year. Any blatant construction error has no time limit imposed on it. For example, if the fire alarm system in a brand new building is supposed to be on a dedicated circuit, and three years later, it is determined that the contractor also included several floor outlets on the same circuit, the prime would be held responsible to remedy that.

### **During the first-year after substantial completion**

1. When a material or workmanship error is found, the owner should first investigate to determine if it is in fact a part of the project and not caused by any other reason.
  - i. *Example: brand new roof is installed, and a ceiling tile shows signs of a leak. The owner should investigate first to determine that it is a leak and not caused from condensation on pipes.*
2. Initial contact should be made by the owner directly to the prime contractor. This contact should be in writing with a copy to the Office of the State Engineer (OSE).
3. Allow a reasonable length of time for correction work.
  - i. This time element will be based on the type of complaint. i.e. Emergency vs. Non-Emergency
4. If no response, contact the prime contractor again. This also should be done in writing with a copy to OSE. If still no response, contact OSE for further action.
5. The Architect/Engineer will generally not be involved during this period unless it is determined that there may have been an error or omission in the design.
6. It is important that any and all items of a warranty nature be documented promptly. Any item properly documented within the stipulated period and not corrected and accepted will be pursued under the terms of the contract.
  - i. *Example: a portion of a roof membrane bubbles within 10 months, it is documented and the contractor tries to fix it by using a new adhesive.*

*However, it bubbles again at 13 months. This would still be covered as an “un-resolved” warranty item.*

**Below are Sections 6.4 and 15.2 from the OSE General Conditions Dated January 26, 2021**

**6.4 Guarantees/Warranty.**

6.4.1 The Contractor guarantees and warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the A/E or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This guarantee/warranty is not limited by the provisions of Sub-Article 15.2.

6.4.2 The Contractor will indemnify the Owner against loss, including loss of use and lost revenues resulting from a breach of the Contractor's guaranty and warranty under Sub-Article 6.4.1, whether the loss arises before or after the Owner's acceptance of the Project.

6.4.3 Where the contract documents provide for equipment and material warranties in addition to the Contractor's guarantees' and warranty contained in Sub-Article 6.4.1, such warranties shall at a minimum:

6.4.3.1 Provide that the term of the warranty shall start on the date of substantial completion of the project or the date the Owner takes beneficial occupancy of any portion of the project that requires the use or start-up of the warranted equipment or material, whichever date occurs first.

6.4.3.2 Provide for complete repair or replacement of defective equipment or material;

6.4.3.3 Provide all materials, shipping, and labor necessary to repair or replace defective equipment or material at no expense to the Owner;

6.4.3.4 Provide that any replacement parts used in repairing or replacing defective equipment or material shall be new or in a like-new condition.

6.4.3.5 Provide for the complete repair or replacement of defective equipment or material within two weeks after receiving written notice of the defect, provided however, that the Owner can, at its sole discretion, grant an extension of time for good cause shown; and

6.4.3.6 Provide for no limitation of liability should the Contractor and/or manufacturer fail to repair or replace defective equipment or material within the time specified in Sub-Article 6.4.3.4 or should the remedy of repair or replacement otherwise fail.

6.4.3.7 Be construed under South Dakota law.



6.4.3.8 Provide that any legal action brought on the warranty shall be brought only in a South Dakota court.

## 15.2 Correction of Work.

15.2.1 The Contractor shall promptly correct all Work rejected by the A/E as defective or as failing to conform to the Construction Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the A/E's additional services and the Office of the State Engineer fees made necessary thereby.

15.2.2 If, at any time after the Owner's acceptance of the fully completed Project any of the Work is found not to have been provided in conformance with the Construction Documents, or, if within one year after such acceptance any of the Work is otherwise found to be faulty or defective, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so. The Contractor shall also repair or replace any part of the Work which is damaged by the defective condition or the remedial Work. This obligation shall survive termination of the Contract, subject to the terms of any applicable statute of limitations. The Owner shall give such notice promptly after discovery of the condition.

15.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Sub-Articles 6.4.1, 15.2.1 and 15.2.2, unless removal is waived by the Owner.

15.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Sub-Articles 6.4.1, 15.2.1 and 15.2.2, the Owner may correct it in accordance with Sub-Article 5.3.

15.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the A/E, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within 10 days thereafter, the Owner may upon 10 additional days written notice sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the A/E's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand.

15.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction removal.



15.2.7 Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Sub-Article 6.4 hereof. The establishment of any time period prescribed by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor liability with respect to his obligations other than specifically to correct the Work

