

## THE GENERAL CONDITIONS OF THE BUILDING COMPLETION INSURANCE

### A. THE SCOPE OF THE INSURANCE

#### A.1 The Subject of the Insurance

The insurer with this insurance contract, within the scope of the Consumer Protection Law numbered 6502 on pre-sale of residential and time share units, provides insurance coverage for the risks of,

a) the bankruptcy of the seller,

b) the death and the successor's rejection of the will, if the seller is an individual or,

c) excluding the conditions listed in clauses A.3 and A.4, the seller's failure to complete the residential or the time share unit within 12 months following the due date stated in the sales contract,

to the consumers listed in the surety account, pursuant to these general conditions and the special conditions.

The insurer with this insurance, for the project subject to pre-sale, will allocate a maximum surety limit to the seller by preparing an insurance contract for the pre-sale portion. Within the scope of the project, after the sale of a residential or a time share unit, for each consumer will prepare individual surety bonds in the amount of no more than the sales price of the residential or the time share unit. The total amount of individual surety bonds constitutes the maximum surety limit allocated to the seller by the insurer.

The payments made only via bank are covered with the surety bond.

In cases when the unit is purchased with a partial mortgage, the portion above the amount of the mortgage issued by the credit provider or the unit financing institution, is covered.

The claim requests in the scope of this insurance contract have to be made within 6 months of following the risk occurrence and certainly within the additional notification period if it is stated in the insurance contract.

#### A.2 The Definitions

In the application of these General Conditions,

**Morgage:** The credit provided pursuant to the Law's 30th and 35th clauses,

**Law:** The law dated November 7th, 2013 and numbered 6502 on Consumer Protection,

**Suitable to Reside Unit:** In the project and in the sales contract between the seller and the consumer, unless a less comprehensive delivery is agreed on; the unit,

- residential unit's roof is closed, the inner and outer stucco and paint jobs are finished, stairs or the elevator is ready to use, and has an independent electric, water and heating along with kitchen, bathroom and plumbing, and has flooring,

- related to the time share units, in addition to the above, the swimming pool, sauna and similar common facilities included in the project that the consumer can utilize, services such as lighting, water, maintenance and items that are related to utilizing these

determined to be complete by the expert,

**Insurance Contract:** The document that is prepared by the insurer and given to the seller,

**Project:** Indicated in the insurance contract and pre sale residential or time share unit including all of the arrangements of landscape and social facilities,

**Seller:** For commercial or occupational purposes, the party that commits to the consumer by signing a pre sale residential or time share unit sales contract, to build the unit with the specifications indicated in the project, or an individual or an entity that acts on behalf of this party,

Within the scope of this insurance, the rights and responsibilities assigned to the “seller”, is also valid for the “contractor” with regard to pre sale time share unit sales contract.

**Sales Contract:** The pre sale sales contract in which the consumer agrees to pay ahead the sales price of the residential or time share unit up front or in installments, and the seller commits to transfer or deliver the unit to the consumer after upon full or partial payment,

**Unit:** Within the scope of the project, the pre sale unit indicated in the sales contract with the seller along with its landscape excluding the social facilities and the time share unit,

**Surety Bond:** The document that is prepared by the insurer per the insurance contract, to be given to the consumer and proving insurance coverage of the payments made by the consumer via bank pursuant to the sales contract,

**Consumer:** Within the scope of the Law numbered 6502, an individual or an entity, without a commercial or occupational purpose, that signed the pre sale residential or time share unit sales contract in order to purchase the unit from the seller,

**Regulation:** The regulation on pre sale residential units and the regulation on time share and long term vacation service agreements,

is meant.

### **A.3 The Situations and Assets that can be Covered with an Additional Contract**

- 1) The interests of the land owner if the sales contract is made in ‘flat for land’,
- 2) Commercial units within the scope of the project such as shops, offices etc,
- 3) The project’s uncompletion due to natural disasters, including but not limited to earthquake, volcanic eruption, land slide, storm, hail, lightning, flood,
- 4) For the units that are bought with a mortgage, the responsibility of the credit provider or the unit financing institution,

can be included in the insurance coverage with an additional contract.

#### **A.4 The Situations that are outside of the Coverage**

1) Any contamination of ionising radiations, radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, or other hazardous properties of such assembly,

2) Any loss caused by contamination by radioactive, toxic, explosive or other hazardous properties from any nuclear assembly, nuclear reactor or nuclear component thereof,

3) The loss caused by any weapons of destruction or device armed with an atomic or nuclear separation and/or combination or similar reaction or radioactive power or material,

4) Any loss caused by ionising radiations excluding any prepared, stored or used for manufacturing, commercial, medical, scientific or other peaceful intended purposes,

5) Any loss due to weapons of chemical, biological, bio-chemical or electromagnetic destructions,

6) The loss due to war, acts of war (whether declared or undeclared), civil war, invasion, blockade, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and military or usurped power;

7) All loss due to biological and/or chemical contamination or toxication caused by acts of terrorism defined in Law on War against Terrorism numbered 3713 and sabotage by similar activities or any counter efforts by an authorized entity made to prevent these acts or to remedy its effects,

8) The loss caused by the decisions taken by a public authority, given that it is not due to the seller's activities against the legislation or contradicting the project. In this case, the time it takes to amend the project to comply with the new legislation will be ignored in the calculations of the delivery due date indicated in the sales contract.

9) The consumer exercising the right of withdrawal or retraction,

10) The consumer against the clause B.3 avoiding the transfer or delivery of the unit,

11) Indirect damages and if it is agreed upon in the sales contract the penalty clause,

12) The assets that are used inside the unit and do not effect the suitability of residing, such as the tiles, fosset, flooring, door knobs, kitchen cabinets not being in the quality committed in the project.

#### **A.5 The Duration and the Termination of the Insurance Contract**

Unless otherwise agreed, the insurance will commence and expire on the dates specified in the insurance contract at 12:00 noon local time in Turkey.

The insurance contract will terminate when the completed unit is transferred or delivered to the consumer in accordance with clause B.3. The responsibility of the insurer on the individual surety bonds issued will end with no other action necessary when the unit mentioned in the sales contract is transferred or delivered. The seller is obligated to notify the insurer immediately when the unit is delivered to the consumer.

The insurer, keeping all of its obligations for the existing surety bonds reserved, in the events listed below, may terminate the insurance contract effective immediately or may ask for an additional collateral or an additional premium payment from the seller:

a) The seller's failure to fulfill its obligations towards the insurer or declaring incorrect information to the insurer,

b) The seller's failure to provide the collateral demanded by the insurer; for collateral provided to the insurer to be insufficient, or to become invalid or worthless.

In case of a termination of the insurance contract due to reasons mentioned above or other reasons, the insurer will notify the Ministry of Customs and Trade and the individuals that a surety bond was issued to within 5 business days.

## **B. THE CONDITIONS ON ESTABLISHING THE INSURANCE CONTRACT AND THE CLAIM**

### **B.1 The Declaration Obligation before the Insurance Contract is Established**

The seller will submit, including but not limited to, information on the project that the insurance coverage is being requested and the information on the past projects, financial statements and documents related to the credit standing, to the insurer.

### **B.2 The Party's Rights and Responsibilities After the Insurance Contract is Established**

The seller is obligated;

a) To provide information on cash and non-cash credit relationships,

b) Not to give any personal pledge or guarantee on its assets (mortgages, liens, fiduciary assignment of ownership, encumbrance on real estate, etc.) to the third parties without notifying the insurer,

c) To notify the insurer of any material change that could affect the decision of extending the insurance coverage and the notification provision of the insurance contract dictates,

ç) To inform the insurer of the situations that an occurrence of a loss is possible,

d) To inform the insurer immediately on payments made by the consumers regardless of its classification,

e) Upon request by the insurer, to provide progress reports on the project at determined stages agreed in the insurance contract and to allow any research and inspection on the progress of the project by the insurer and,

f) To inform the insurer with no delay when a consumer exercises the right of withdrawal or retraction.

The insurer;

a) May request a detailed information on strategy changes and if indicated in the insurance contract, update on sellers' operations, and anything that might seem important to the credit standing.

b) Will keep a surety account for the seller and to this account, will register all surety bonds issued for each consumer on the date of issue.

c) If it is agreed upon in the insurance contract, to be able to issue the surety bond, before a sales contract is made, may demand the information on the unit sale and the consumer from the seller.

ç) If it is agreed upon in the insurance contract, will perform the necessary evaluation and for each consumer, upon request from the seller, will issue a surety bond.

d) In cases when a consumer exercises the right of withdrawal or retraction, will cancel the surety bond issued for the consumer in question and deduct it from the sellers' surety account.

e) Will hand out the surety bond and the disclosure form, that its minimum content is determined by the Undersecretariat of the Treasury, to the consumer.

### **B.3 The Transfer or the Delivery of the Unit**

In the conditions listed below, it is deemed that the unit is transferred or delivered to the consumer:

a) Registration of the unit to the consumer's name if the unit is subject to freehold title deed,

b) Registration of the unit's transitional title deed to the consumer's name, and the transfer in a suitable to reside condition.

c) Presentation of the unit that is subject to time share purpose, in a suitable to use condition.

### **B.4 The Elevation of the Risk**

a) Pursuance of the Seller via bankruptcy or opening a court case for bankruptcy,

b) When the seller,

- related to the payments of the debts, a decision made by a court or an authorized official entity that constraints all of the creditors.

- documented default on debts or inability to enforce proceedings pursued with any other means of proof acceptable by the insurer,

- to agree to a composition of debts,

- detection of a significant deterioration of the financial situation after the insurance contract is made or,

- detection of a more than 6 months delay in the milestones of the project plan that was submitted at the time of establishing the insurance contract,

the risk is considered to be elevated.

### **B.5 The Rights and Responsibilities of the Seller When the Risk Occurs**

The seller, within the duration of the insurance contract or when the risk occurs, is responsible from performing the duties listed below.

a) To inform the insurer of any situation that may require an obligation pursuant to the insurance contract, within 5 days of becoming aware.

b) Upon request from the insurer, without any delay, to provide any obtainable data and information on the incident and the reason for the loss along with the determination and the results of the conditions that caused the loss, the details of the claim obligation and its amount and anything that could be useful to exercise recourse rights.

c) To provide required data and information pertaining to the consumer payments to the insurer.

ç) To inform the insurer of any other existing insurance contracts relating to the subject of the insurance.

### **B.6 The Claim Amount and the Claim Payment Methods**

The amount of maximum claims to be paid by the insurer is capped by the maximum surety limit indicated in the insurance contract.

The insurer, pursuant to the obligation undertaken per this insurance contract, when the risk occurs, will reimburse the payments made by the consumers, the capital amount capped by the amount indicated on the surety bond along with its legal interest.

If more units were sold than the number indicated in the project, the insurer will be deemed relieved from all obligations by making claim payments to the consumers listed in the surety account.

The insurer can make the claim payment in cash, under the condition of consumer transferring all rights on the unit to the insurer in accordance with the agreement establishing conditions indicated in the Regulation.

The insurer, as a result of an evaluation, if it is agreed upon in the insurance contract, may decide for project to be completed and delivered to the rightful owners instead of reimbursing payments made.

In this case, the new delivery due date will be in a reasonable time frame after the selection of the contractor and under no condition can exceed 24 months.

The insurer is obligated to exercise due diligence in the selection of the contractor that is going to complete the project.

If the risk occurred due to failure to complete the unit within the 12 months following the due date stated in the sales contract or any of the conditions listed in clause A.3, the insurer may retain the same seller/contractor to complete the project.

If the decision is made for building to be completed, the seller is obligated to refrain from any behavior that could prevent the project from being continued.

### **B.7 Subrogation**

The insurer, in case of an occurrence of the risk and the payment of the claim, in the amount of total claims paid, will legally assume the seller's position and take over the rights of the seller within the scope of the pre sale residential or time share project in question.

### **B.8 Recourse**

The seller, independent from the insurer's other remedies to fully or partially recover the claims paid including the rights on the unit, will reimburse the insurer in amount of payments made per the established building completion insurance contract along with expenses with an interest rate, capped at legal default interest rate, that will be determined with an agreement between the seller and the insurer.

The seller can swap its receivables from the insurer, only if these receivables are undisputable and legally granted, with the amount requested by the insurer via recourse.

### **B.9 The Request for an Additional Colletaral**

Upon the request from the insurer, the seller is obligated;

a) To provide colletaral such as cash, lien, letter of credit, surety bond or any other colletaral that is deemed appropriate, in the amount of no more than the maximum surety limit, in cases of failure to fullfill the obligations towards the insurer, declaring incorrect information, determination of a significant financial deterioration after the insurance contract was made or detection of a delay of more than 6 months in any of the milestones of the submitted project plan,

b) To pay an additional premium for the dates between the receipt of the colletaral reques, and either the date that the colletaral is actually provided or the date of all existing surety bonds are cleared.

## **C. MISCELLANEOUS PROVISIONS**

### **C.1 The Premium Payments and the Commencement of the Insurer's Liability**

The premium amount will be calculated based on the criterias such as the number of units in the project, duration of the project, value of the project, seller's activities in the past etc. The premium payment provisions will be defined in the insurance contract.

The seller will pay the premium and the other invoiced expenses at the determined time and under conditions stated in the insurance contract.

In case of failure to make the premium payments, Turkish Commercial Code will be applied.

Insurer's liability to the consumer will commence at the end of the grace period effective as of the issue date of the surety bond.

## **C.2 Amendments to the Insurance Contract**

The modifications to the insurance contract will not take effect unless they are stated as an amendment to the insurance contract.

## **C.3 Notifications and Notices**

All declaration of intentions and notifications relating to the insurance contract will be done in writing.

The notifications from the seller and the consumer will be made to the insurer's headquarters or to the agent that mediated the contract.

And the notifications from the insurer will be made to the last known address of the seller or the consumer via notary public or a registered mail. The notifications to the parties via telegram or by hand against signature will be considered as registered mail. The notifications made in an electronic environment by using safe e-signatures and via the transmissions to the insurer, the consumer and the seller can be proved, will also be considered valid.

## **C.4 The Change of a Consumer**

In case of a change of the consumer that was a part in the sales contract, before the transfer or delivery of the unit in question, if it is agreed upon in the insurance contract, after upon assessment of the consumer who is taking over, the insurer may decide to continue to be liable to the new consumer.

The seller is obligated to notify the insurer immediately after learning of the change.

## **C.5 Commercial and Occupational Non-Disclosure**

Insurer and anyone that acts on behalf of the insurer, in connection with this insurance, will be liable from the damages resulting from a disclosure of personal information of the consumer or the commercial and the occupational information pertaining to the seller.

## **C.6 Jurisdiction**

Any dispute arising from the insurance contract, the place of jurisdiction, for the cases against the insurer, will be the one domiciled at the place of the insurer's headquarters or the domicile of the agent's that mediated the contract, on the cases against the seller, the commercial courts responsible from the domicile of the insured will have the jurisdiction.

## **C.7 Special Conditions**

Parties can agree on special conditions in the insurance contract, in accordance with the nature of the work.