

## HOW DECENNIAL LIABILITY INSURANCE WORKS: A GUIDE DESIGNED FOR EUROPEAN BUILDERS

### Aims of this guide

This guide is designed to help you prepare for the interview that will allow you to procure decennial liability insurance to cover your general liability for construction projects undertaken in France.

The aim of this guide is to identify and explain the various types of insurance coverage, both necessary and required in France for contractors who conduct business here.

The guide is not intended as a substitute for the documents your insurer provides, but it does cover the important points related to this type of insurance coverage. It also alerts you to the information and documentation that the insurer will ask you to provide.



## 1 Liability and construction insurance: driven by the underlying logic of protecting consumers

Builders' liability is a longstanding tradition, which can be traced back to the French Civil Code of 1804. Since then, laws pertaining to liability have tended to evolve in ways that seek to ensure consumer protection. The same logic drives the insurance that covers the liability of builders and contractors.

In France, the general concept of mandatory insurance is designed to ensure the physical and financial protection of the consumer. The minimum coverage that insurance policies are required to offer is spelled out in laws and in standard contract wording.

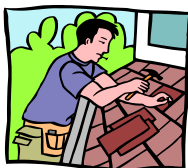
### 1.1 What is decennial liability insurance?

The French system was designed to provide the building owner with effective protection against major damage that can occur or come to light in the decade that follows completion of the building (hence the term decennial insurance).

Contractor liability in France is subject to rules of public safety. The legal ramifications of decennial liability are codified in articles 1792 and 1792-2 of the French Civil Code. The principle of presumption of liability for a non-negotiable period of ten years (a decade) is inscribed in the law.

#### 1.1.1 Who is concerned?

All contractors involved in the construction of a building are automatically responsible or liable to the *maître de l'ouvrage*,<sup>1</sup> for damages—even those caused by defects associated with sub-standard ground conditions—which compromise the solidity of the building or render it unfit for use.



You are a contractor if you are:

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<sup>1</sup> The client (sometimes called the Principal) is the person for whom the construction work is carried out.

- An architect, a general contractor, a technician or another person who has signed a *louage d'ouvrage*<sup>2</sup> agreement or contract with the client;
- A vendor upon completion of a building you have constructed or commissioned.

You are also subject to decennial liability if you are engaged in the capacity of vendor for a building that has yet to be built (project vendor: with respect to forward operations or for the sale of one or several properties for future completion), a property developer (professional vendor upon completion of buildings he himself has commissioned—having assumed responsibility every step of the project), a single-home builder, or a technical project manager.

### 1.1.2 What are the principles of responsibility?

You are a builder and as such are presumed to be responsible for ensuring public safety for the decade following the date of Acceptance of Works. This is a matter of public policy, which cannot be waived or altered by contract.



In other words, you are only exempt from full liability if you can prove extraneous cause of damage: *Force majeure*, third-party fault, or the victim's own.

### 1.1.3 What is the contract term?

You are responsible to the client and successive buyers for the work you perform for the space of ten full years. The date of Acceptance of Works marks the beginning of your period of responsibility.

The Acceptance of Works is the date on which the client signals acceptance of the completed work, with or without reservation. This comes about at the request of the most diligent party, and is often the object of a written contract. It is, in any case, pronounced jointly.



## 1.2 What is decennial liability insurance?

The French construction insurance system in place since 1978 is a “double-barrelled” system:

- The inherent defect insurance carrier compensates the property owner according to the standard clauses;
- The inherent defect insurance carrier pursues damages against the builder and his liability insurers under decennial liability.

<sup>2</sup> A contract for services is a contract through which the client obtains the performance of an act or acts from a number of persons or companies to carry out a particular project.

This system allows the client to be compensated rapidly, and guarantees that the consumer will be protected.

### 1.2.1 Are you required to carry insurance?

Decennial liability insurance coverage is mandatory for individuals and business/corporate entities subject to decennial liability on the presumption established by article 1792 of the Civil Code, and those that follow (concerning construction projects constitutive of a building).



The exception: there are a number of building products that do not require insurance. These are civil engineering projects (maritime constructions, highway infrastructure, docks, hangars, railways, urban and industrial waste management systems, and storage facilities), Roads and Utility Services / External Works (VRD), and open-air sports facilities. The same exception applies to building installed equipment intended exclusively for the exercise of a professional activity (a factory assembly line, gantry crane, automatic cattle-feeder system...).

Your required insurance coverage must include guarantees equivalent to those described in standard clauses. For this reason, these always appear in contract documents. This is minimum acceptable code coverage, which no contract element may diminish, however much one chooses to augment this coverage. The required clauses concern the maintenance and duration of the guarantee, deductible, and exclusions.

Every builder is required to carry decennial liability insurance; but the builder who is denied insurance coverage may call upon the Central Tariff Bureau (BCT), an independent administrative authority, to determine rate conditions and deductible in view of securing the required coverage.



#### ***The sub-contractor***

*Sub-contractors are not subject to obligatory decennial liability coverage, for the reason that they have no direct relationship with the project manager. However, they are every bit as accountable to the ordering/instructing party and client as the project manager, and must therefore be insured.*

*Decennial liability insurance contracts provide for liability coverage, for the simple reason that most business entities are, depending on the market, prime contractors or sub-contractors. Nevertheless, as this relates to non-mandatory coverage, the insurance scope is on occasion limited, even in the case of events qualified as “decennial”.*

### 1.2.2 What is covered by decennial liability insurance?

The insurance contract covers building repairs when fault is attributed to the insured.



The policy covers material damages of obvious severity, irrespective of cause and origin, which did not become manifest by the date of Acceptance of Work, and which appear within the ten-year period.

The damages must be beyond doubt, with the consequence that:

- Building solidity is compromised
- The building is rendered unsuitable for its purposes.

Such a building is unfit to serve the purpose for which it was built. But as this is a subjective notion, examination must be made on case-by-case basis.

### 1.2.2.1 Extent of the policy

The law provides no limits as to coverage amounts. It is up to insurer to determine the scope of repairs required for the building in question.

Nonetheless, the insurer may limit the number of construction sites that may be opened over a given period.

The decennial policy includes a deductible as a matter of course; and it is forbidden to contract a policy for the purpose of covering the deductible. You are also responsible for paying a share of compensation, the amount of which is set forth in your contract. The deductible may not be charged to the complainant. The insurer will compensate the property owner as required, and will ask that you reimburse the amount of your deductible.

### 1.2.2.2 Management mode



The French construction insurance system is intended to offer ultimate consumer protection: the capitalization of the decennial policy. The leading characteristic of the capitalization program is that it is based on a single premium principle, as opposed to a multiple or partial premium system. The collection of single premium at the outset of construction effectively covers every incident that may arise over the course of a decade, from the date of Acceptance of Works.

This allows the decennial policy to maintain viability, without requiring supplementary premiums, even in the case of builder default and/or termination of the insurance contract.

In practice, you are not required to inform the insurer every time you open a construction site; this would be asking too much of you, builders! Instead, the insurer is content to account for and to underwrite building projects that are consolidated over the course a year.

## 2 Steps to follow

### 2.1 Why be insured against decennial liability?

Every contractor who builds in France, whether his project concerns a new development or a renovation, must be insured against decennial liability.

### 2.2 When am I required to subscribe to this insurance?

Your subscription to decennial liability insurance should be in hand before work commences.



You must be able to provide proof of decennial liability insurance from the outset of every construction project.

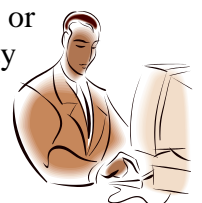
If your business was formed after the construction project opens, it is imperative that you take out a policy before you begin the actual work.

It is therefore necessary that you seek coverage as soon as project planning begins.

### 2.3 Whom should I ask about insurance?

You may approach your usual provider to obtain a decennial liability policy for a construction project based in France. In fact, there is nothing to prevent a European insurance provider from insuring a builder from another member state, whether through a branch office based in France or as a provider operating in accordance with free exchange of services directive.

If you have contracted a policy already, whether through an agency based in France, or through a network incorporated on French soil, you can request decennial liability insurance coverage for a construction project from your local insurance entity, which will then solicit coverage through a France-based subsidiary.



In the event you are a building and public works (BTP) subsidiary, you could be eligible for insurance coverage from the provider for your parent company.

Of course, you may also solicit a French insurance company that is qualified to offer this kind of insurance.



## **2.4 What sort of questions will my agent ask?**

This may very well be a required policy, but it is offered on the market—and rates vary widely, for the reason that insurer companies determine fees based on the elements that comprise the risk for which coverage is sought.

### **2.4.1 Covered activities**

You must define your professional activity exactly.

By activity is understood building services and equipment packages (plumbing, electricity, tiling, etc.) as these terms exist under prevailing insurance nomenclature. In fact, insurance companies that practice construction risk employ a common reference system to define covered activities (See document available at the FFSA website:



[http://www.ffsa.fr/webffsa/portailffsa.nsf/html/F0F2C610D04AFDADC12574200042CB28/\\$file/nomenclatureBTPdec2007.pdf](http://www.ffsa.fr/webffsa/portailffsa.nsf/html/F0F2C610D04AFDADC12574200042CB28/$file/nomenclatureBTPdec2007.pdf)).

What matters most is that the projects you undertake fall within the scope of the business you have stipulated. Should you undertake a project you have failed to stipulate, then you will not be covered should an incident occur.

### **2.4.2 Required professional skills**

The practice of the building trades in France requires professional titles at least equivalent to a French CAP or BEP in the industry in question, or a certificate of at least three years' professional experience (self-employed or salaried employee) in a European member state.

When applying for decennial liability insurance, you must therefore prove you have the skills required to work within your industry and experience appropriate to the project.

You will inform the insurance company as to the nature of your industry, combined experience and the growth of your industry (the date your business was created, staff size, sales, start of professional activity), professional experience in the field (CV, references from completed projects...), and information as to past insurance and claims on file.

### **2.4.3 Qualifying construction techniques**

The construction sector is rapidly evolving, and the non-traditional sector is developing apace. For example, requests for coverage in the field of renewable energy, innovative procedures, and “green” construction materials have begun to multiply.

If you find yourself in this situation, be aware that your case will be decided on its individual merits. This is the same for portfolio builders who lack an objective measure for insurance liability, and who await development of existing normative



procedure. This problem of how to approach the risk applies to every builder, regardless of nationality.

Standard clauses reflect French standards in the matter, or even standards published by the standards-setting bodies of European Union member states.

To qualify for coverage, products and/or procedures must be identified in accepted standards as defined by the contract (see appendix).



## Appendix – TECHNICAL GLOSSARY: WORKING STANDARDS

- **Documents Techniques Unifiés (DTU) or NF DTU** (Europe-approved French standards): these set out rules for design, building, and structural calculations. They are managed by the Commission générale de normalisation du bâtiment;
- **Avis Techniques (ATec):** these technical assessments are approved assessments of a new product or procedure, published by the CSTB via the “Commission chargée de formuler les Avis Techniques” (created December 2, 1969). Avis Techniques are good only for a set period, after which they must be renewed.

The Technical Assessment comprises a dossier, prepared by the manufacturer, which includes recommendations suggesting likely product performance, the product’s general fitness for use, and information as to current regulations and the durability of service.

Avis Techniques serve as independent sources of information; they are not required of products, and do not assume a regulatory character.

- **Documents Techniques d’Application (DTA)** are a form of Avis Technique. They describe product use and the implementation of CE Marking.

*NB: Concerning the inter-changeability of the Avis Technique or DTA with foreign versions:*

*The instruction procedure, formulated by a member of the UEATc, makes it possible to account for foreign versions of Avis Technique and DTA by way of “permit confirmation”. Conversely, the Avis Technique and DTA may account for one or many versions outside of France. It is also possible to simultaneously administer ATec or DTA with one or more foreign versions, accounting for each nation individually.*

- **Appréciations Techniques d’Expérimentation (ATEX)** are issued by the CSTB. They are technical evaluation procedures formulated by a group of experts on an innovative product, technique, or process requiring initial experimental application, and for which an ATec has not yet been issued.
- **Enquêtes de Technique Nouvelle (ETN):** these are evaluations carried out by an approved technical inspection service, on the basis of product specifications prepared by the manufacturer.
- **Pass innovation** is a voluntary mechanism which enables companies, technical auditors and insurance companies to gain an initial (third-party) technical assessment of products or systems within the space of three months. The Pass innovation is not a substitute for the Technical Assessment; its only purpose is to provide an expert’s guarantee for a benchmarked innovation without conducting additional testing.