



ARAG

Special Insurance Provisions

Builder's legal protection insurance

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Special Insurance Provisions

Part E

Provisions for builder's legal protection insurance

If especially agreed on conclusion of construction insurance, the following Special Insurance Provisions (SIP) apply as a supplement to GIP.

This document is for Information only. The german, french or italian wording governs your policy.

E1 Insurance carrier

E1.1 The insurance carrier is AXA-ARAG Legal Protection Ltd., Affolternstrasse 42, 8050 Zurich (hereinafter referred to as "AXA-ARAG"), a corporation with registered office in Zurich and a subsidiary of AXA Insurance Ltd. Insured parties can only assert their claims under this legal expenses insurance policy against AXA-ARAG.

E1.2 AXA cannot issue directives to AXA-ARAG for settling legal cases. AXA-ARAG does not provide AXA with any information on legal cases if this could disadvantage the insured.

E2 Insured objects

E2.1 The parties can purchase legal protection insurance for buildings that are the subject of a builder's risk insurance policy.

E2.2 The insurance can cover buildings with a maximum construction price of CHF 5 million (excluding price of land purchase).

E3 Insured persons

E3.1 Natural persons with residence in Switzerland as well as trading companies and legal entities with registered office in Switzerland can hold policies.

E3.2 The insurance covers the policyholder in his capacity as the builder of the insured construction project.

E4 Legal case

E4.1 Insurance coverage is valid:

- E4.1.1 for legal representation in the case of disputed legal claims and receivables;
- E4.1.2 when obtaining legal advice (legal protection for advisory services);
- E4.1.3 for the collection of insured receivables.

E4.2 Multiple disputes arising from the same cause or the same event or that are directly or indirectly connected to it constitute a single legal case.

E5 Insured benefits

In the event of an insured legal case, AXA-ARAG covers the following services and costs:

E5.1 Insured services:

- E5.1.1 handling of legal cases and representation by AXA-ARAG as well as
- E5.1.2 advising the insured parties in connection with hidden defects (as defined in E6.2 below) to the insured building. The legal advice is provided exclusively by AXA-ARAG.

E5.2 Insured cost reimbursement:

- E5.2.1 **Lawyer fees:** AXA-ARAG assumes the fees in accordance with the agreement for a legal representative mandated by the insured party with AXA-ARAG's prior approval;
- E5.2.2 **Expert opinions:** Expert opinions to clarify disputed issues, provided that such opinions were obtained with AXA-ARAG's approval or at the request of a court;
- E5.2.3 **Court fees:** Court fees and other procedural costs billed to the insured by government courts and authorities;
- E5.2.4 **Compensation for legal expenses:** Compensation for legal expenses that are imposed on the insured during proceedings;
- E5.2.5 **Collection costs:** The collection of the claims of the insured under an insured legal dispute until a writ of attachment or a bankruptcy notice has been obtained.

E5.3 The insurance only pays benefits, as defined in E5.1 and E5.2, in the absence of coverage from builder's risk insurance and any supplementary coverage that may apply.

E5.4 The insurance does not cover the payment of:

- E5.4.1 costs owed by a liable party, a liability insurer, or another insurer or third party;
- E5.4.2 costs of taking legal action that seems futile from a legal or factual perspective, from time-barred claims, and from claims against overindebted companies.

E5.5 Buyout of proceedings: AXA-ARAG has the right to compensate commercial interests instead of assuming the costs in accordance with E5.2. Commercial interests are derived from the material amount in dispute by taking due account of the procedural and collection risks.

E5.6 Amount of insurance:

- E5.6.1 The amount of insurance for all legal cases during the full insurance period (5 years) is at most CHF 100,000 in total. For expert opinions, the maximum amount of insurance is CHF 20,000 and upon CHF 1,000 for advisory service.
- E5.6.2 Services of AXA-ARAG are based on a rate of CHF 200 per hour.

5.7 **Deductible:** For all lawyer and court fees as well as any costs for expert opinions, the insured party pays a 10% deductible, but at least CHF 1,000. The amount of insurance is reduced by the deductible.

5.8 **Minimum amount in dispute:** The insurance only covers cases where the amount in dispute in civil proceedings exceeds CHF 500 per defect. For an amount in dispute of up to CHF 500, entitlement is limited to one legal advisory session.

E6 Insured legal cases

E6.1 The insurance covers the representation of the insured person's interests in the following areas (exhaustive list):

E6.1.1 **Contracts for work and services:** Disputes with contractors, tradesmen, gardeners and suppliers of construction materials regarding hidden defects;

E6.1.2 **Architecture / engineering contract:** Disputes with architects, structural engineers, and construction managers regarding planning and construction errors that lead to a hidden construction defect.

E6.2 A report must be drawn up immediately before the building is handed over for definitive commissioning. The report must include all the defects identified by an expert in construction by exercising due care. The building consists of all contractually owed works and services of providers who participated in the construction project and thus comprises the "complete building". Hidden defects refers to defects discovered after the above-mentioned report has been drawn up or, in the absence of such a report, after the building has been handed over for definitive commissioning and that could not have been identified by an expert in construction exercising due care by the date on which the report had to be drawn up. Defects that are deliberately concealed are always deemed to be hidden defects.

E7 Exclusions

E7.1 The insurance does not cover representation of the insured person's legal interests

E7.1.1 from the areas that have not been listed as insured;

E7.1.2 against AXA-ARAG and the mandated lawyers, mediators and experts;

E7.1.3 against AXA Insurance Ltd. (Switzerland) from this contract (construction insurance);

E7.1.4 in defense of non-contractual claims from third parties for damages and satisfaction;

E7.1.5 from disputes over defects listed in the report as defined in E6.2;

E7.1.6 from disputes over defects that are not listed in the report as defined in E6.2 but that were apparent to an expert in construction using due care and consequently should have been included in the report in accordance with E6.2 para. 1;

E7.1.7 from disputes over defects that – in the absence of a report as defined in E6.2 – would have been apparent to an expert in construction using due care at the time when the report had to be drawn up and that consequently should have been included in the report in accordance with E6.2 para. 1;

E7.1.8 from disputes over defects that were discovered before the report was drawn up in accordance with E6.2, or, in the absence of a report as defined in E6.2, before the building was definitively commissioned, or that would have been apparent to an expert in construction using due care. In particular, the insurance does not cover defects that were discovered during partial commissioning or in connection with acceptance of work by an individual provider, but before the complete building as defined in E6.2 para. 1. is finished;

E7.1.9 in connection with the following construction activities defined in the basic service catalog of SIA standards 102 and 103:

- Planning, preparing and carrying out acceptance procedures
- Handing over the building or parts thereof to the client
- Representation when the building or parts thereof are accepted
- Recording any complaints regarding defects and ordering measures and deadlines to remedy them
- Drawing up and following up on acceptance reports and defect lists
- Ordering contractors and suppliers to remedy defects
- Arranging for and supervising contractors and suppliers in the context of remedying defects;

E7.1.10 in disputes arising in connection with additional works, unless they were agreed in writing either before they were delivered or before the date of the report as defined in E6.2, or, in the absence of a report as defined in E6.2, before the building was definitively commissioned;

E7.1.11 in disputes relating to public deeds and the registration of contractors' liens;

E7.1.12 bei Streitigkeiten über Beanstandungen, die gemäss SIA Norm 414 im Toleranzbereich liegen.

E7.2 References to SIA standards are also valid for builders who did not enter into an agreement to use SIA standards.

E8 Risk increase and reduction

E8.1 AXA-ARAG must also be informed of any change in circumstances that is significant for assessing the risk as defined in A6.2 GIP.

E8.2 The periods defined in A6.2 GIP start only from the date on which AXA-ARAG is notified.

E9 Validity period and contract term

E9.1 In amendment of A2 GIP, insurance coverage starts when the report as defined in E6.2 is drawn up or, in the absence of such a report, when the insured party definitively commissions the building, and ends after 5 years without notice of termination (fixed contract term).

E9.2 The insurance covers legal cases in connection with defects which are discovered during the contract term and which require legal protection coverage during the contract term.

E9.3 Deadline for filing claims: Legal protection coverage does not apply if AXA-ARAG is informed of the legal case more than three months after the policy or the relevant supplementary policy ends.

E10 Burden of proof

If the report as defined in E6.2 is drawn up only after the building has been accepted for definitive use or if no such report exists, it is assumed that any defects that do exist would have been noticed if the report had been drawn up on time and that they are therefore not hidden defects. The burden of proof to the contrary rests with the insured party.

E11 Notification of a legal case

E11.1 Supplementing A6.3 GIP, AXA-ARAG must be notified immediately about a legal case for which the insured party requests assistance.

E11.2 In amendment of A8 GIP, AXA-ARAG must approve in advance the engagement of any legal representative and any legal action that relies on insurance coverage.

E12 Settling a legal case

E12.1 Participation: After registering a legal case, the insured party must obtain and forward to AXA-ARAG the necessary information and powers of attorney, as well as the evidence and the counterparty's current addresses.

E12.2 Procedure: After examining the legal situation, AXA-ARAG will discuss the next steps with the insured person and conduct negotiations with the aim of coming to an amicable agreement. If the negotiations fail, AXA-ARAG will decide on the appropriateness of legal proceedings and the next steps.

E12.3 Engaging a lawyer: AXA-ARAG decides on whether or not to engage a lawyer.

E12.3.1 AXA-ARAG recommends a suitable lawyer to the insured party.

E12.3.2 The insured party mandates and grants its power of attorney to the lawyer.

E12.3.3 The insured party must release the lawyer from his professional secrecy obligations toward AXA-ARAG and obligate him to keep AXA-ARAG informed about developments in the case and, in particular, to provide AXA-ARAG with the information and documents it needs to make decisions, provided there is no conflict of interest and that forwarding the information requested to AXA-ARAG does not disadvantage the insured.

E12.3.4 AXA-ARAG reimburses the necessary expenditure. Agreements between the lawyer and the insured party are binding on AXA-ARAG only if it has expressly approved them.

E12.3.5 If AXA-ARAG has issued confirmation of coverage, the insured party will authorize AXA-ARAG to safeguard his rights under the mandate towards the lawyer.

E12.4 Free choice of lawyer: The insured party has the right to appoint a lawyer of his choice with the agreement of AXA-ARAG

E12.4.1 if legal representation is needed in connection with court or administrative proceedings (monopoly of lawyers);

E12.4.2 in the case of a conflict of interest, i.e. in the event of a legal case for which AXA-ARAG must also grant legal protection to the counterparty.

E12.4.3 If no agreement can be reached on which legal representative to engage, AXA-ARAG will choose one of three legal representatives proposed by the insured. These may not work for the same law firm or partnership of attorneys or be connected in any way.

E12.5 Commitment to provide coverage: AXA-ARAG commits to cover the insured or his legal representative to the extent that it is obligated to do so.

E12.5.1 AXA-ARAG can limit the period, attach conditions or a proviso, stipulate only a stage of the proceedings, or restrict the amount of its commitment to provide coverage.

E12.5.2 AXA-ARAG can revoke a commitment to provide coverage at any time with immediate effect, unless legal proceedings are pending in court. Alternatively, its commitment to provide coverage can be revoked for the next instance.

E12.5.3 If AXA-ARAG is prevented from filing objections from the insurance contract against the legal representative because of a commitment to provide coverage, it can reclaim from the insured or policyholder any excess benefits that it has paid out.

E12.6 Settlements: AXA-ARAG will assume obligations from a settlement only if it has given its prior approval.

E12.7 Compensation for legal expenses: Any benefits awarded to the insured party from court fees or as compensation for legal expenses must be passed on or ceded to AXA-ARAG up to the amount that it has paid in benefits.

E12.8 Futility: If AXA-ARAG refuses to pay benefits because it believes that doing so is futile, it must state its reasons in writing immediately and, in the case of a difference of opinion, inform the insured person of the possibility of instituting proceedings. In this case, the insured is responsible for meeting the deadlines for any appeals and limitation periods.

E12.9 Procedure in case of differences of opinion: If there are differences of opinion about the measures required to deal with a legal dispute, the insured party has the right to have the matter assessed by an independent expert to be appointed by both parties. The judge must appoint an independent expert if the parties cannot agree on such a person. The parties must each advance half of the costs, and the losing party must assume all costs. No compensation for legal expenses will be paid. Unless the insured requests such a procedure within 20 days of having received the rejection, the decision is deemed to have been accepted. The concordat on arbitration rules apply as supplement.

E12.10 Measures on own account: If there are differences of opinion, the insured can also at his own expense take measures that he believes to be correct and useful. If, after having been refused benefits, the insured initiates or continues legal proceedings at his own expense and achieves an outcome more favorable to him than AXA-ARAG had stated in writing or from adopting the procedure for settling differences of opinion, AXA-ARAG will pay the costs incurred up to the maximum amount of insurance.

E13 Prohibition of assignment

The insured is not entitled to assign claims under this contract against AXA-ARAG to third parties without the written approval of AXA-ARAG.

E14 Termination in the event of a claim

E14.1 In amendment of A3.1 GIP, each party can terminate the legal protection insurance after a claim for which AXA-ARAG is liable for benefits, at the latest when the last benefit is paid.

E14.2 Insurance coverage ends 14 days after the other party receives the notice of termination.

E15 Premiums

In amendment of A4 GIP, the premium must be paid in advance for the entire 5-year contract term as defined in E9.1; the premium is calculated based on the information in the insurance application.

E16 Information obligations and rules of conduct

E16.1 Supplementing A5 and A6.3 GIP, the builder (policyholder) must identify and request a remedy immediately for defects that occur during the construction phase and that were discovered when the report as defined in E6.2 was drawn up or, in the absence of a report as defined in E6.2, when the building is definitively commissioned.

E16.2 Additional information obligations and rules of conduct are defined in E6.2, E11 and E12.

E16.3 If any duties to provide information or rules of conduct are breached by the insured, AXA-ARAG may, in amendment of A8 GIP, reduce or deny benefits. This will not occur if the breach was beyond the control of the insured under the circumstances, or if the insured can prove that the legal case did not arise and the amount of the benefits owed was not affected as a result of the breach.

E 17 How does AXA-ARAG use data?

AXA-ARAG uses data in accordance with the applicable legal provisions. For more information, visit [AXA.ch/data-protection](https://www.axa.ch/data-protection).

