EXPLANATORY NOTES TO THE SALES CONTRACT FOR CONSUMERS*)

*) pertaining to the Existing single-family home sales contract form (**2021 version**)

1. Sales contract form with explanatory notes

The existing single-family home sales contract form has been adopted in consultation by the Dutch Homeowners' Association (Vereniging Eigen Huis), the Dutch Consumers' Association (Consumentenbond), VastgoedPRO, VBO Estate Agents (VBO Makelaar) and the Dutch Association of Real Estate Brokers and Real Estate Valuers NVM (Nederlandse Vereniging van Makelaars en Taxateurs in onroerende goederen NVM). These organisations all use the same contract form.

This sales contract form assumes a kind of standard situation. Because no situation is completely equal, the sales contract may be adjusted to specific circumstances. The parties and real estate brokers involved in the transaction can include additional arrangements between the parties in the sales contract for that purpose. Of course, the parties may also deviate from what is included in the sales contract by default.

2. Sales contract

If you purchase or sell a home, the agreements made are formalized in a sales contract. If you use the services of an estate agent to purchase or sell a home, the estate agent will assist you with this. It has always been sensible to record the purchase of a home in a written contract, but following a change in the law, on 1 September 2003, this is now necessary in the majority of cases. Unlike in the past, an oral sale or purchase of a residential property is often not valid. After all parties have signed, the sales contract will be sent to the civil-law notary referred to in the sales contract. In most cases, the buyer will have a so-called cooling-off period. This cooling-off period will be explained in more detail in the explanatory notes in Article 16.

3. Transfer deed

The civil-law notary will prepare the transfer deed on the basis of the information in the sales contract. The transfer deed is the formal legal document which is necessary to effect the actual transfer of ownership agreed upon in the sales contract. The parties will first receive a draft of the transfer deed. The civil-law notary will make an appointment with you to sign the transfer deed.
Before the transfer deed is signed, the civil-law notary will go through the main points of the deed with the buyer and the seller. The transfer deed is then signed by the buyer, the seller (or by someone authorized by the buyer or the seller) and the civil-law notary.
The civil-law notary will ensure that the transfer deed is registered in the public registers. The buyer officially becomes the owner of the property at the time of registration in the public registers. The transfer of ownership is processed by the Cadastre, Land Registry and Mapping Agency (or 'kadaster' in Dutch). The civil-law notary will then send the buyer a copy of this deed: the 'title deed'. The civil-law notary will keep the original deed in his records.

4. Completion statement

Along with the draft of the transfer deed, you will receive a completion statement from the civil-law notary. The completion statement for the buyer (usually) includes the purchase price, the costs to be settled, the property transfer tax, the Land Registry fees, et cetera. The completion statement for the seller includes the amount to be repaid on the mortgage loan (if any) and the associated costs. As a rule, any outstanding estate agent's charges and, where applicable, the consultancy fees in respect of the mortgage loan are paid through the civil-law notary. The estate agent's charges are payable by the party who has engaged the estate agent.
The amount shown at the bottom of the completion statement is the amount payable by the buyer or the amount to be received (or paid) by the seller.

5. Energy label

In principle, each seller is obliged to deliver a definitive energy label to the buyer in the transfer of ownership of his home. An energy performance certificate shows how energy efficient a home is and provides information on how to improve efficiency. For example, by improving the insulation of roofs, walls, floors and windows or the energy efficiency of heating systems. Legislation has been tightened in this area as of 1 January 2015. If the seller does not have an energy label on delivery, the seller risks a penalty.
There are some exceptions to the main rule that the seller must deliver a definitive energy label on the transfer of ownership of his home, for example in case of a listed building. More information about VAT can be obtained from your estate agent. You can also find more information on the website of the central government: www.rijksoverheid.nl

6. Explanatory notes to the sales contract

Below is a point-by-point explanation of the text of the sales contract.

Details of the parties

The details of the seller, including the number of his/her passport, identity card or driving licence (identity document), are inserted in clause A on the first page of the sales contract. If known, the seller's future address and telephone number will also be inserted to facilitate future communication with the civil-law notary and the Cadastre, Land Registry and Mapping Agency (for example, the transfer deed can be sent to this address). If there is a co-seller (such as a spouse or registered partner), his or her details will also be inserted in clause A.

The details of the buyer are inserted in clause B. If the buyer consists of two persons, the details of both of them will be provided in clause B.
If a spouse or registered partner does not sign the sales contract as co-buyer or co-seller but merely to indicate his or her consent, his or her name will only be stated on the last page of the sales contract.

Co-signature of the contract by the spouse / registered partner
Section 88(1)(a) in Book 1 of the Dutch Civil Code provides:
'A spouse shall require the consent of the other spouse for the following juristic acts: agreements for the disposal, encumbrance or giving in use of and juristic acts for discontinuation of the use of a residential property which is occupied by the spouses jointly or by the other spouse alone or of items pertaining to such residential property or to the household effects.' "Household effects" means all movable property serving as household goods, furniture and home furnishings, with the exception of book and art collections and collections of a scientific or historical nature.
If the other spouse is absent or unable to express his or her will and therefore does not give his or her consent, the Subdistrict Court (kantonrechter) may be requested to take a decision.
The rules applying to spouses also apply to registered partners.
By virtue of Section 88(1)(a) quoted above, the general rule, therefore, is that the seller's spouse or registered partner must co-sign the sales contract to indicate his or her consent for the sale. No consent is required under this Section if the buyer purchases property from his or her own spouse or registered partner. However, the consent and signature of the spouse or registered partner are required for the creation of a mortgage on the immovable property. The details of the buyer(s) and the seller(s) are stated on the cover page.
Cohabiting partners who are not married or in a registered partnership do not require each other's permission for the sale of the home in which they live together, although their cohabitation agreement may provide otherwise. If a home is owned jointly by cohabiting partners, they do need each other's assistance to sell it.

Article 1 Sale and purchase.

Option A: Ownership (freehold)*

The seller sells to the buyer and the buyer buys from the seller title to the plot of land with a residential property and further appurtenances:
- at the address (incl. postcode): .....
- recorded in the Public Land Register as municipality of ....., section ..... no. .....
- with a surface area of ..... (....) square metres,
hereinafter referred to as: 'the immovable property',
at a purchase price of € ....., in words: .....,
including the items specified in the list pertaining to this sales contract.
The parties set the value of the movable property included in the purchase price at € ....., in words: .....

Option B: Ground lease (leasehold)*

1.1. *The seller sells to the buyer and the buyer buys from the seller the right of leasehold to the plot of land with home and all the appurtenances:*
- at the address (incl. postcode): .....
- recorded in the Public Land Register as municipality of .....,
section ..... no. .....
- with a surface area of ..... (....) square metres,
hereinafter referred to as: 'the immovable property',
at a purchase price of € ....., in words: .....,
including the items specified in the list pertaining to this sales contract.
The parties set the value of the movable property included in the purchase price at € ....., in words: .....
1.2. *The following leasehold conditions apply to the immovable property:*
.....
The buyer declares that he has taken note of the contents of the applicable conditions, which have been added to the sales contract.
1.3. *The ground lease is perpetual / perpetually renewable / for a fixed term ending on .....**
The next ground lease review date is …….
1.4. *The ground rent has been bought out in perpetuity / The ground rent has been prepaid for the period ending on ….*
*The ground rent must be paid periodically and currently amounts to € …… per …..**
The next ground rent review date is …….
The next ground rent indexation date is …….

Article 1

Option Ownership (freehold) / Ground lease (leasehold).
In this article it is stated whether the buyer acquires title to (i.e. ownership of) an immovable property, or whether the buyer acquires a ground lease on an immovable property. If the buyer acquires title to an immovable property, the buyer becomes the owner of the plot of land and the home built on it (freehold). If the buyer acquires a ground lease, the buyer becomes the leaseholder (and not the owner) of the plot of land on which the home is built (leasehold). A ground lease (or leasehold) is a right entitling the leaseholder to hold and use a plot of land, owned by another party, and the buildings built on it. As another party is and remains the owner of the plot of land, the ground lease comes with conditions, and in many cases ground rent (or 'canon' in Dutch) must be paid for the use of the land. These conditions are specified in the Option Ground lease in Article 1.2. The nature and scope of the ground lease and the amount of ground rent payable are specified in Articles 1.3 and 1.4.

Description of the immovable property
The details of the immovable property, such as the street and house number, the municipality and the data recorded in the Land Registry, are inserted here. As a rule, the surface area stated here is based on the data recorded in the public registers. Those data may differ from the actual situation, see Article 6.11. Finally, the purchase price is filled in, both in figures and in words.

List of items of property
The sales contract is accompanied by a list of items of property included in the sale. To avoid any disputes, the buyer and the seller should specifically stipulate which items are included in the sale. For example, the buyer may claim that the free-standing stove is included in the sale, whereas the seller may see this completely differently. If the parties disagree about which items are included in the sale, it is sometimes necessary to resolve the matter by looking at the legal distinction between movable and immovable property. But this is a grey area - even lawyers often have difficulty making this distinction. To avoid the buyer and the seller from getting caught in a legal tangle, a list of items of property is prepared. This list includes both movable and immovable property. It makes good sense to go through the entire list together. Obviously, items may be added or removed from the list.

Valuation of movable property
The fact that the list of items of property does not specify whether an item of property is movable or immovable does not mean that this distinction is not important. From a tax perspective, it is in the interests of both the buyer and the seller to pay attention to this aspect. The buyer must pay transfer tax for the transfer of immovable property. This is not the case for the transfer of movable property. On the other hand, the interest paid on the part of a (mortgage) loan relating to the purchase of movable property is not deductible for income tax purposes. Moreover, the proceeds of the sale of the immovable property may affect the tax deductibility of mortgage interest on a loan taken out by the seller in the future.
The sales contract states the value at which the movable property included in the sale is assessed. The assessed value of the movable property must, of course, be reasonable. The tax authorities may verify this and request an explanation. If the assessed value does not reflect the true value of the movable property, the buyer may incur a tax penalty.
As stated above, the distinction between movable and immovable property is not always clear. It is therefore not uncommon for parties to disagree over the question of whether property is movable or immovable. However, as parties cannot negotiate about the movable or immovable nature of property, there is no point in having such a discussion. Whether property is movable or immovable is determined by law and not by the parties. For the determination of the property transfer tax liability, it is therefore sufficient to prepare a list of items of property.
The civil-law notary must specify any movable property included in the sale in the transfer deed, as well as the amount paid for such property and whether the amount in question is included in the purchase price of the immovable property. As the civil-law notary does not usually have a concrete idea of the property sold, it is helpful if the buyer or the buyer's estate agent indicates on the list of items of property which items are, in his or her opinion, movable property.

Article 2 Costs / Property transfer tax
2.1. *The costs associated with the transfer of ownership and charged by the civil-law notary, such as property transfer tax, notarial charges and Land Registry fees, shall be payable by the buyer/seller*. The civil-law notary shall be designated by the buyer/seller*.*
The costs charged by the civil-law notary in connection with the repayment of bridging loans and/or mortgage loans and/or the cancellation of mortgages and/or seizures encumbering the immovable property shall be payable by the seller.
The costs charged by the civil-law notary in connection with the creation of a mortgage in respect of the immovable property shall be payable by the buyer.
Any other costs charged by the civil-law notary, such as the costs of a power of attorney or the services of an interpreter, shall be payable by the party on whose behalf such costs are incurred.
2.2. *If the property transfer tax is payable by the buyer and the property transfer tax due is reduced pursuant to Section 13 of the Dutch Legal Transactions (Taxation) Act (Wet op belastingen van rechtsverkeer, hereinafter: 'WBR'), the buyer will/will not* pay to the seller the difference between the property transfer tax that would have been due but for application of Section 13 of the Dutch Legal Transactions (Taxation) Act on the one hand and the actual payable property transfer tax on the other (hereinafter also referred to as: the 'Section 13 difference').*
If the Section 13 difference is paid to the seller, the buyer will owe property transfer tax on that difference (as well). The parties agree that the property transfer tax on the Section 13 difference will be deducted from the Section 13 difference to be paid to the seller. This ensures that the total amount that the buyer pays in property transfer tax plus the Section 13 difference to be paid to the seller will be equal to the amount the buyer would have owed in property transfer tax but for application of Section 13 WBR.

If the parties agree that the aforementioned difference will be paid to the seller, such payment will be effected through the civil-law notary, simultaneously with payment of the purchase price.

Article 2
This article stipulates who pays the costs: the buyer or the seller. If the seller pays the costs, this is called 'v.o.n.' or 'vrij op naam' (meaning 'no additional costs payable by the buyer'). If the buyer pays the costs, this is called 'k.k.' or 'kosten koper' (meaning 'fees, charges and taxes payable by the buyer'). These costs include the notarial charges for the transfer deed (inclusive of VAT), the Land Registry fees and the property transfer tax.
Brokerage fees and mortgage costs are not included in these costs! The costs charged by the civil-law notary to the seller and to the buyer are specified separately. Property transfer tax is a percentage of the purchase price. If the value of the immovable property exceeds the purchase price, the property transfer tax is levied on such higher value.
Turnover tax (VAT) may be due on the purchase price, for example if the property sold has recently been refurbished, or if an office or surgery is sold along with the property. In that case it must be clear who pays the VAT due. In the case of new-build projects, VAT is usually included in the purchase price. More information about VAT can be obtained from your estate agent.

Article 2.2 will be applicable if the seller sells and transfers the immovable property within a specified period after having become the owner. The period as specified in Section 13 WBR is currently set at 6 months. Pursuant to Section 13(1) WBR, the amount on which property transfer tax or turnover tax is due in respect of that prior acquisition may be deducted from the taxable amount This is also referred to as the 'reduction of the taxable amount' [*'maatstafvermindering'*]. This creates a property transfer tax advantage as a result of the onward delivery of the immovable property within a specified period, which advantage accrues to the buyer pursuant to Section 13 WBR. If the seller wishes to use this advantage, the seller must agree this with the buyer during the negotiations. In such event, the word 'not' in article 2.2 will be stricken out, and the buyer will pay the seller this advantage by way of compensation.

Previously, it had been approved that this compensation paid to the seller would not be involved in the levy of property transfer tax. That approval was abandoned on 1 July 2011. The compensation that the buyer pays to the seller has since come under the consideration again, so that property transfer tax is due on that amount as well. The final sentence of article 2.2 provides that the buyer never pays more property transfer tax than would have been paid but for onward delivery pursuant to Section 13 WBR. . The disadvantage that is created as a result of the abandonment of the approval is, thus, at the expense of the seller. On 1 January 2021, the property transfer tax tariffs as stated in Section 14 WBR were adjusted. Furthermore, an additional subsection was added to Section 13 WBR, namely Section 13(4) WBR. Section 13(4) WBR provides that, in derogation of Section 13(1), where a reduction of the taxable amount is applied, the tax that was due in respect of the prior acquisition, rather than the taxable amount, may be deducted from the tax due on account of acquisition of the dwelling within six months of the prior acquisition. Allowing a tax reduction in those situations, rather than a reduction of the taxable amount, prevents a situation where the reduction exceeds the tax cumulation. Application of Section 13(4) WBR does, however, require that the reduced tariff, as stated in Section 14(2) WBR, was properly applied. In principle, Section 13(4) WBR applies only if, due to unforeseen circumstances, the dwelling has not reasonably been used, or has only temporarily been used, as the principal residence within six months of acquisition.

Example of application of Section 13(4) WBR in combination with article 2.2 of the purchase agreement
Non-first-time buyer B acquires a dwelling for EUR 350,000, paying 2% property transfer tax on such amount (2% of EUR 350,000 equals EUR 7,000). B very briefly occupies the dwelling but, due to unforeseen circumstances, transfers the dwelling to K for EUR 360,000 within six months. K does not use, or only temporarily uses, the dwelling as the principal residence, so that K does not qualify for the exemption or the reduced tariff of 2%. Consequently, in principle, K owes EUR 28,800 (8% of EUR 360,000). Pursuant to Section 13(1) WBR, however, K may reduce the taxable amount by deducting the value on which property transfer tax has already been paid (EUR 350,000). As a result, but for the added fourth subsection, K would ultimately owe 8% property transfer tax on only EUR 10,000 (EUR 360,000 minus EUR 350,000). This equals EUR 800. As a result of the fact that B had briefly occupied the dwelling, K's tax advantage amounts to EUR 28,000. The new Section 13(4) WBR provides that the advantage cannot exceed the amount that was due in respect of the prior acquisition at the 2% tariff. Therefore, K can only apply a reduction of EUR 7,000 and owes EUR 21,800 (8% of EUR 360,000 minus EUR 7,000). If the parties agree in article 2.2 that the buyer will, indeed, pay the property transfer tax saved - also referred to as the Section 13 difference - to the seller, the buyer will pay such advantage in the amount of EUR 7,000 to the seller. In the third sentence of article 2.2, the buyer and the seller have agreed that the property transfer tax due on the Section 13 difference will be deducted from the Section 13 difference to be paid to the seller, so that, ultimately, in this example, the seller is entitled to compensation in the amount of EUR 6,481.48 (EUR 7,000/108 x 100). The amount of EUR 518.52 is the property transfer tax due on the Section 13 difference. This ensures that the total amount that the buyer pays in property transfer tax plus the Section 13 difference to be paid to the seller will be equal to the amount the buyer would have owed in property transfer tax but for application of Section 13 WBR.

Article 3 Payment
The purchase price and the charges, costs and taxes shall be paid through the civil-law notary at the time of execution of the transfer deed.
The seller accepts that the civil-law notary will retain the purchase price until it has been ascertained that the immovable property is not mortgaged or seized – and that no mortgages or seizures are registered in respect thereof – when it is transferred.

Article 3

The civil-law notary receives the purchase price from the buyer. From this amount the civil-law notary will first pay the seller's creditors, including any mortgage lenders and attachment creditors, whose claims must be paid from the purchase price in connection with the proper completion of the purchase and transfer in accordance with the civil-law notary's code of professional conduct. The balance of the purchase price will be paid over to the seller. As the civil-law notary must ensure that the property sold is not encumbered with any mortgages or seizures when it is registered in the public registers and as this can only be formally confirmed after the date of transfer, the civil-law notary may not pay over the purchase price on behalf of the buyer (also for insurance reasons) until he has received this confirmation, which is usually several days after the date of transfer.

Article 4 Transfer of ownership
4.1. *The transfer deed shall be executed on ..... or at such an earlier or later date as the parties may jointly agree, before a civil-law notary working for the firm of ..... in ....., hereinafter referred to as 'civil-law notary'.*
4.2. *The seller represents and warrants that, at the time of execution of the transfer deed, he has the right to sell and transfer ownership of the property.*
4.3. *In case of the sale of a ground lease, 'transfer of ownership' as used in this sales contract must be read as 'transfer of the ground lease'.*

Article 4
There are several different types of transfer. The two main types are the legal transfer and the actual transfer. The legal transfer of a property (also called transfer of ownership or transfer of title) is effected by means of a notarial transfer deed and the registration of that deed in the public registers. The actual transfer takes place when the keys are handed over and the immovable property sold is taken into possession. These different types of transfer may take place on different dates (see Article 7), but more often than not they occur on the same day (namely if the transfer deed is registered on the same day). The date of the legal transfer must be inserted in Article 4.1. If the actual transfer precedes the legal transfer, this may constitute a transfer of beneficial ownership. In that case the advice of the civil-law notary should be sought in connection with any property transfer tax liability. The name of the firm of civil law notaries preparing the transfer deed is also stated in this article. The buyer usually chooses the civil-law notary, although the seller may declare that he reserves the right to choose the civil-law notary, which he must do before signing the sales contract. This is often done in the case of new-build projects in order to ensure that the whole project is transferred through one civil-law notary.

As the sales contract form provides for two types of purchase, i.e. acquisition of a freehold property or a leasehold property, the terminology varies as indicated in Article 4.3.

Article 5 Bank guarantee. Deposit
5.1. *As security for performance of the obligations of the buyer, the buyer will provide a written bank guarantee to be issued by a bank for an amount of €....., in words ....., no later than on ..... This bank guarantee must be unconditional, continue until at least one months after the agreed date of transfer of ownership, and contain a provision stating that the bank in question will pay the amount of the guarantee to the civil-law notary at the civil-law notary's first request. If the amount of the guarantee is paid to the civil-law notary, he shall apply it as provided in Article 11. If the circumstance described in Article 11.5(d) arises, the period of the bank guarantee must be extended, failing which the parties oblige the civil-law notary under this sales contract to claim payment of the amount secured by the bank guarantee. The civil-law notary is hereby obliged and, as far as necessary, irrevocably authorized to notify the banking institution, as soon as the buyer has met his obligations and the legal transfer has been completed, that the bank guarantee provided by the buyer can be cancelled. For the purposes of this article the term 'banking institution' shall mean a bank or insurance company as defined in Section 1:1 of the Dutch Financial Supervision Act (Wet op het financieel toezicht).*
5.2. *Instead of providing such a bank guarantee, the buyer may also pay a deposit in the amount specified in Article 5.1, to be held by the civil-law notary and transferred to the civil-law notary's client trust account.*
The aforesaid account must be credited with the deposit on or before the date specified in Article 5.1.
Subject to the provisions of Article 11, this deposit shall be set off against the sales price to the extent that the sales price and any other amounts payable by the buyer are not paid from a loan raised by the buyer. Any part of the deposit that is not set off shall be refunded to the buyer as soon as he has met his obligations under this sales contract.
The seller shall not be liable to pay interest on the deposit.
Any interest paid on the deposit by the civil-law notary shall accrue to the buyer.
5.3. *If the buyer is declared bankrupt or enters into a debt payment programme under the statutory debt arrangement scheme for natural persons and the bankruptcy trustee (curator) or the administrator (bewindvoerder) does not wish to honour this sales contract, the amount of the bank guarantee mentioned in Article 5.1 or, as the case may be, the deposit shall be forfeited to the seller by operation of law by way of a penalty as referred to in Article 11.2.*

Article 5
It is customary for the seller and the buyer to agree that the buyer arranges for the provision of a bank guarantee for an amount equal to 10% of the purchase price after the signature of the sales contract. A bank guarantee is a commitment by a bank to pay the amount covered by the bank guarantee if the buyer fails to meet his obligations. The provision of a bank guarantee takes some time. The bank guarantee is usually provided within a number of days after the expiry of the financing arrangement clause. The bank charges a fee for the issuance of a bank guarantee.
Instead of providing a bank guarantee, the buyer may also pay a deposit. It is customary (and sensible) to pay such a deposit into the civil-law notary's client trust account. If the buyer is a private customer, the law generally limits the deposit or bank guarantee to 10% of the purchase price.

The aim of Article 5 is to provide the seller with some degree of assurance that the buyer will meet his obligations. The penalty referred to in Article 11 may also be recovered from the bank guarantee or the deposit. If the deposit represents a considerable sum or is retained for some time by the civil-law notary, the civil-law notary will usually pay the buyer interest on the deposit.

Article 6 Condition of the immovable property / Use

6.1. *The immovable property shall be transferred to the ownership of the buyer in the condition in which it was at the time of conclusion of this sales contract, therefore with all pertinent rights and claims, servitudes benefiting the property as the dominant tenement and qualitative rights, visible and hidden defects, without being mortgaged or seized and without any registrations of mortgages or seizures in respect thereof. The buyer accepts this condition and along with that the restrictions under public law attached to the immovable property, in so far as these are not 'special burdens'.*

6.2. *The buyer expressly accepts all servitudes encumbering the immovable property, special burdens and restrictions, separate real rights, perpetual clauses and qualitative obligations attached to the immovable property, in so far as these are evident and/or arise from the most recent and previous notarial transfer deeds and/or deeds creating a restricted right on the immovable property, or as evident and/or arising from a separate notarial deed*

The seller has furnished the buyer with a copy of the exact wording (in copy) of all these notarial deeds.

The buyer declares that he has read and understood the contents of these deeds.

The seller has informed the buyer that the following restrictions under public law are attached to the immovable property:

…….

The buyer declares that he expressly accepts these special burdens (under public law).

6.3. *At the time of the transfer of ownership, the immovable property will possess the actual characteristics that are necessary for its normal use as a …… If the actual transfer (giving possession) takes place at an earlier date, the immovable property will possess the characteristics that are necessary for its normal use at such earlier date.*

The seller does not warrant that the property has any characteristics other than those required for its normal use. Defects that prevent normal use and that are known or apparent to the buyer at the time of creation of this sales contract will be for the account and risk of the buyer. The seller is exclusively liable for the repair costs of defects that prevent normal use and that were not known or apparent to the buyer at the time of creation of this sales contract. When determining the repair costs, the 'new for old' deduction will be taken into account.

The seller is not liable for other (additional) damage, unless the seller can be blamed.

6.4.1. *The seller does not know whether/The buyer knows that* the immovable property contains pollution which impairs the use by the buyer specified in Article 6.3 or which has resulted or might result in an obligation to clean up or decontaminate the immovable property or to take other measures.*

6.4.2. *As far as the Seller is aware, the immovable property contains/does not contain* an underground tank for the storage of liquids or other substances.*

To the extent that the seller is aware of the presence of an underground tank for the storage of liquids or other substances, the seller declares the following with respect to such a tank still being used or not and/or having been made unfit for use in accordance with the statutory requirements: ……

6.4.3. *The seller does not know whether/The buyer knows that* asbestos is present in the immovable property.*

6.4.4. *The seller does not know whether any/The buyer knows that* orders or decrees as defined in Section 55 of the Dutch Soil Protection Act (Wet bodembescherming) have been issued by the competent authorities with respect to the immovable property.*

6.5. *The buyer has the right to inspect both the interior and the exterior of the immovable property immediately before the transfer deed is executed.*

6.6. *The seller warrants that no improvements or repairs that have not yet been made or that have not been made properly were prescribed or announced by any public authority or utility company on or prior to the day on which he signs this sales contract.*

If any improvements or repairs are announced or prescribed by any public authority or utility company on or after the day of signature but prior to the time of transfer, the consequences of the announcement or repair or improvement notice shall be at the buyer's expense and risk. The announcement or repair or improvement notice shall be at the seller's expense and risk if it relates to non-performance of any obligations arising for the seller under the law or this sales contract.

6.7.1. *The seller does not know whether/The buyer knows that* the immovable property is designated or is involved in a procedure for designation:*

a. as nationally listed building within the meaning of the Heritage Act;

b. listed on the provincial historical building register or on the municipal historic buildings register pursuant to a provincial bylaw, municipal bylaw or zoning plan.

6.7.2. *The seller does not know whether/The buyer knows that* the immovable property is situated within an area that is designated as or for which a procedure is pending for designation:*

a. as nationally listed building within the meaning of Section 9.1, subsection 1 sub a of the Heritage Act;

b. as protected urban or village conservation area pursuant to a provincial bylaw, municipal bylaw or zoning plan.

6.8. *The seller declares that there are no obligations to third parties with regard to the immovable property on account of any right of first refusal, option right or repurchase right.*

6.9*. As far as the seller is aware, the immovable property is/is not* included in a (preliminary) designation as defined in the Dutch Local Authorities (Compulsory Purchase) Act (Wet voorkeursrecht gemeenten).*

6.10. *The purchase does not comprise any items to which lessees may assert any rights by virtue of their statutory right of removal.*

6.11. *Neither of the parties shall derive any rights from any difference between the actual size of the immovable property and the size stated. In derogation of this, the parties agree the following: ……*
6.12. *The seller declares that the charges for previous years, in so far as assessments have been imposed, as well as any ground rent fallen due have been paid.*
To the extent that the said ground rent and/or assessments have not yet been paid, the seller declares that he will pay them upon request.
6.13. *The mere statement by the seller that he has no knowledge of certain facts or circumstances shall not be construed to imply a warranty or indemnity for the buyer or the seller.*

Article 6
Article 6.1 states that the buyer purchases the immovable property in the condition in which it was at the time of conclusion of the sales contract. The main rule is that the seller does not warrant the absence of (hidden) defects in principle. In other words: the immovable property will be transferred to the buyer including all visible and invisible defects. All risks will therefore be placed with the buyer in first instance. This applies to both factual defects and for other defects, in so far as these cannot be designated as 'special burdens' within the meaning of Section 7:15 of the Dutch Civil Code. Article 6.2 will discuss those 'special burdens'.
In view of the main rule that all risk is in first instance placed with him, the buyer is required to have some investigation conducted himself. For example, in principle he must ask the municipality what designated use is attached to the immovable property pursuant to the applicable zoning plan. However, the seller must provide all information known to him to the buyer: he must therefore in principle tell the buyer what he knows about the characteristics and (factual) defects of the immovable property.
An important exception is made in Article 6.3 to the aforementioned main rule that all risk is in first instance for the buyer, in so far as it concerns the factual characteristics of the immovable property. The explanatory notes to Article 6.3 devotes significant attention to this exception.
Article 10 deals with a situation where the immovable property cannot be transferred in the condition in which it was at the time of conclusion of the sales contract because it has been damaged or destroyed after the purchase but before the transfer.

The immovable property is delivered unencumbered of mortgages, attachments or registrations for mortgages and attachments. The seller is obliged to repay any existing mortgage loans and see to it that no mortgages are registered in his name with respect to the property in the public registers. In practice, the civil-law notary will ensure that any mortgages registered in the seller's name are cancelled. The seller will also ensure that the immovable property is not encumbered by any attachments. If the immovable property has been seized, the transfer cannot usually be effected until the seizure has been lifted.

Article 6.2 concerns 'special burdens and restrictions' that are attached to the immovable property (a term from Article 7:15 of the Dutch Civil Code). 'Special burdens and restrictions' (hereinafter: 'special burdens') are legal restrictions that are attached to the immovable property. This may be private-law restrictions such as (servient) tenements, qualitative obligations and so-called 'perpetual clauses'. Pursuant to such restrictions, another party (than the owner) has a claim to the immovable property (for example a right of way over the ground). It may also concern public-law restrictions such as a decision by the Municipal Executive to create a statutory pre-emptive right. Prior to the sale, the seller must inform the buyer on any legal restrictions that are attached to the immovable property as 'special burdens'. He will provide the buyer with (copies of) the (preceding) notarial deeds he possesses. The buyer can read in these deeds what special burdens are attached to the immovable property. It follows from Article 6.2 that the buyer (expressly) accepts the special burdens that ensue from these deeds.
If the buyer is aware that special burdens are (also) attached to the immovable property that are not apparent from the deeds made available to the buyer, he will inform the buyer of those special burdens, so that the buyer is aware of these when the purchase contract is concluded. Public-law restrictions (which are attached to the immovable property as a special burden) are not always stated in the preceding notarial deeds. The public-law restrictions the seller is aware of can be explicitly stated in Article 6.2. The buyer (expressly) accepts the restrictions stated in Article 6.2.
It is important that the seller tells the buyer what he knows, and that the buyer knows, based on the provisions in Article 6.2 and the preceding notarial deeds provided to him, what (private-law and public-law) special burdens are attached to the immovable property. If the buyer fails to provide information, he can be confronted with a claim for damages later. Because the special burdens concern claims of other parties to the immovable property, the seller will often not be able to cancel those burdens, or only with a great deal of difficulty. If cancellation is impossible, the buyer will be able to claim compensation for damages from the seller in principle. It is therefore important that the seller tells the buyer what special burdens are attached to the immovable property (so that he can accept these special burdens).

Article 6.3 makes a far-reaching exception to the main rule that the immovable property will be transferred to the buyer including all visible and invisible defects. Article 6.3 provides that when ownership of the immovable property is transferred, it possesses the actual characteristics that are necessary for its normal use. Normal use for a residence means, among other things, that the residence can be lived in safely and with a certain extent of permanence. If a defect prevents normal use, the buyer can confront the seller about this. However, this does not mean that any defect prevents normal use. Depending on the age and price of the residence, the buyer of an existing residence will have to take account to a certain extent of a certain degree of (overdue) maintenance and adjustments to meet today's requirements that must be carried out, even if the necessity for that was not immediately visible at the time the purchase was concluded. In addition, Article 6.3 provides that defects that prevent normal use and that are known or apparent to the buyer at the time of creation of this sales contract will be for the account and risk of the buyer. For example: The seller sells a home with rotten roof boarding. It has been determined that the rotten roof boarding prevents the normal use of the residence. The buyer is aware of this on signing the sales contract. After signing the sales contract, the buyer cannot confront the seller because the 'normal use' in Article 6.3 is prevented by the rotten roof boarding. After all, at the time of signing the purchase contract the buyer was aware of this and the parties agreed that defects that prevent normal use and that are known or apparent to the buyer at the time of creation of the sales contract will be for the account and risk of the buyer. The notion of 'apparent' is broader than that of 'known'. Defects of which the buyer is

not aware but which he should have discovered if he had acted with the requisite level of care and attention, are 'apparent'. Accordingly, the buyer may not take it for granted that everything is in order. The buyer is expected to verify, or to have verified, whether the property meets his requirements. The saying 'ignorance is bliss' certainly does not apply here. In case of doubt, the buyer must ask questions and/or carry out an inspection (or have an inspection carried out). This does not mean that the seller is allowed to keep quiet. The seller is under a disclosure obligation. He must inform the buyer of any defects which he ought to know to be relevant to the buyer but of which the buyer is not aware, as far as he knows or suspects. This disclosure obligation is not limited to the defects referred to above. If the seller knows that the immovable property is not suitable for any specific purpose specified by the buyer, the seller is obliged to inform the buyer accordingly. Although it follows from Article 6.3 that the seller does not warrant the suitability of the property sold for the intended specific use, the seller is under a disclosure obligation. If the seller fails to meet his disclosure obligation, the buyer may hold the seller liable if the buyer was not aware of the defect.
The saying 'ignorance is bliss' does not apply to the seller either. If it is discovered afterwards, despite a proper inspection by the buyer, that a defect existed, when ownership of the property was transferred, which hampers its normal use, the seller may be held liable. This also applies to soil pollution. When neither the seller nor the buyer are aware of any soil pollution, the seller will, in principle, bear the risk if the normal use of the immovable property is at stake. If any pollution does not hamper the property's normal use the risk will, in principle, rest with the buyer.
The seller's obligation to transfer a property which possesses the characteristics that are necessary for a normal use also applies, in principle, to any items of (movable) property included in the sale. In that case, too, the seller must inform the buyer of any defects that affect the normal use of such items and that are not immediately detectable by the buyer. If the buyer has any doubts, he should ask the seller questions or inspect the items of property included in the sale (or have them inspected).

The penultimate sentence of Article 6.3 provides for repair costs. The seller is exclusively liable for the repair costs of defects that prevent normal use and that were not known or apparent to the buyer at the time of creation of this sales contract. As a result, the seller bears the risk of making the immovable property suitable for normal use after all. When determining the repair costs, the 'new for old' deduction must be taken into account. In determining the 'new for old' deduction, the costs of renewal, on the one hand, and the service life of the part to be replaced, on the other hand, are taken into account. For example: based on Article 6.3 of the sales contract, the buyer has held the seller liable for an inoperative central heating boiler. The central heating boiler must be entirely replaced. The central heating installer has estimated the costs of replacing the central heating boiler to be € 2,500. The expected service life is estimated to be 20 years. At the time of purchase, the central heating boiler was 10 years old. The 'new for old' deduction is then 50%, i.e. € 1,250. The seller must therefore pay half of the repair costs to the buyer.
The buyer bears the risk of the other (consequential) loss, unless the seller is at fault. The seller is at fault if he, for example, knowingly conceals defects that prevent normal use.

In Article 6.4.1 the parties should indicate whether they are aware of any pollution in the immovable property or not. Such as a clause is also known as an 'awareness clause'. Articles 6.4.2, 6.4.3, 6.4.4, 6.7.1 and 6.7.2 are also examples of awareness clauses. Such clauses have evidential value and serve as warning signs for the parties. Their evidential value lies in that they help to avoid any disputes of fact between the parties. For example, if the buyer declares that he is aware of the presence of an oil tank, he can hardly claim later that the seller failed to inform him of the presence of the tank. It is clear from the sales contract that the buyer was aware of the presence of the tank. Conversely, if the seller states that he is not aware of the presence of an oil tank, he can hardly claim later that he informed the buyer of the presence of the tank or that the tank was clearly visible to the buyer. After all, the seller stated in writing that he was not aware of an underground tank. The warning signal function of awareness clauses is that they make the parties aware of the subject in question. The parties are more or less forced to put down in writing what they know or don't know. The seller is encouraged to meet his disclosure obligation and the buyer is encouraged to meet his investigation obligation. To avoid any misunderstandings, Article 6.13 clearly provides that a statement by the seller to the effect that he has no knowledge of certain facts or circumstances does not imply a warranty or an exclusion/limitation of liability. As stated above, the saying 'ignorance is bliss' does not apply to the buyer or the seller. It follows from Articles 6.1 and 6.3 of the sales contract whether the buyer can hold the seller liable, provided that defects which are readily ascertainable by the buyer are at the buyer's risk. The parties may, of course, derogate from all or any the standard provisions in the sales contract with respect to the allocation of risks.

Article 6.4.2 relates to underground tanks for the storage of liquids and other substances, such as oil tanks and septic tanks. Special rules apply to the use and cleaning of underground oil tanks. The seller can indicate whether the tanks are still being used, whether they have been made unfit for use and, if so, when this was done and whether this was done in accordance with the statutory requirements. If an oil tank which is not used has not been made unfit for use, the buyer and the seller would be well advised to make clear agreements about the cleaning up or removal of the tank and the associated costs. Such agreements can be inserted in the blank space below this article. If the seller does not know whether any oil tanks are present, the buyer would be well advised to investigate the presence of any oil tanks before signing the contract. If a tank is present in the garden which has not or not yet been cleaned in accordance with the Activities (Environmental Management) Decree (Activiteitenbesluit milieubeheer), the competent authority may order the (re)cleaning or removal of the tank. In that case, a soil analysis must first be made to identify any soil pollution as a result of leaking oil, which would result in an obligation to clean up the soil. The clean-up method depends on the degree of pollution. The soil must be cleaned up by an approved clean-up contractor.

In Article 6.4.3 the seller must state whether he is aware of the presence of asbestos in the immovable property. This also applies to the presence of asbestos in sheds, roofs or lean-tos or in the paving materials used for a garden path. The removal of asbestos requires special precautions. If asbestos is found, the parties may include a clause in the sales contract stipulating whether the asbestos will be removed and, if so, at whose expense. If the seller does not know whether the property contains asbestos, the buyer may have the property inspected for asbestos.

Article 6.4.4 deals with orders or decrees as defined in Section 55 of the Soil Protection Act (Wet bodembescherming). By virtue of this Act, the provincial or local authorities may issue an order or decree requiring the soil to be analysed or cleaned up. If the seller knows that such an order or decree has been issued, he must advise the buyer of that fact.

By virtue of Article 6.5 the buyer has the right to inspect both the interior and the exterior of the immovable property immediately before the notarial transfer deed is signed (or 'executed'). This should be done as briefly as possible before the execution of the transfer deed. After all, the immovable property may still undergo all sorts of changes This is therefore another opportunity before the transfer of ownership for the buyer to check whether the immovable property is in the same condition in which it was at the time of signature of the sales contract. The seller's estate agent (if one has been engaged) will often be present during the inspection.

Article 6.6 relates to repair or improvement notices (or aanschrijvingen in Dutch) from public authorities or utility companies. The government or a utility company can oblige an owner to improve or repair his immovable property in a certain way, such as a notice from a utility company requiring repairs to be carried out to the electrical system, or a notice from a local authority requiring the owner to carry out repairs to the façade. It is important for the buyer to know whether this has been done. After all, fulfilling such an obligation involves expenditure and the work must usually be carried out within a specified time. The aim of this clause is to avoid unpleasant surprises for the buyer. A repair or improvement notice normally does not come as a surprise. In most cases the owner will have known for some time that something is wrong. If the buyer has met his investigation obligation and the seller his disclosure obligation, the buyer will already be aware of the defects. Accordingly, the buyer will, in principle, bear the costs if the public authority or utility company issues a repair or improvement notice after the signature of the sales contract but before the transfer of ownership. Repair or improvement notices relating to building work carried out without a permit or in contravention of a permit will, in principle, be for the seller's account.

Article 6.10. If the property sold is rented and the seller and the tenant have agreed that the tenant will vacate the property before the transfer deed is executed, due account must be taken of the fact that a tenant is, in principle, entitled to remove the items installed by him. He must reinstate the property to its original condition as at the commencement of the tenancy. Exceptions to this rule are permitted changes and additions, and loss or damage due to wear and tear and gradual deterioration. It is important for both the buyer and the seller to know exactly what is and what is not included in the sale.

Article 6.11 provides for all areas, such as the land registry area of the plot and the floor area of the immovable property. Because the buyer has viewed the situation on the site, and he can therefore see what he buys, it often does not matter much whether the size given deviates from the actual size. It is therefore common to agree that any difference between the actual size of the land and the size stated does not give rise to a settlement. It may sometimes be important for the buyer that the actual floor area matches or virtually matches the given floor area. In derogation from the main rule, the parties can then agree otherwise. This agreement can be laid down on the dotted line of Article 6.11. For example, the parties can include that the buyer is entitled to a compensation from the seller if it turns out that the floor area is at least 5% smaller than stated. The amount of the compensation should also be laid down, for example an amount for each m2 the stated floor area exceeds the actual floor area. Because the sales contract does not state the usable area of the residence, it is wise to also include this on the dotted line. The selling estate agent can help in this. Estate Agents (forming part of NVM, VBO or VastgoedPro) are obliged to measure the residence according to the 'measurement instructions usable area of residences', so that the data are known. The size of the plot is stated in Article 1 of the sales contract.

Article 6.13. This article re-emphasizes that a statement by the seller that he is not aware of something – soil pollution, for example – does not say anything about who bears the risk of soil pollution. If the seller declares that he is not aware of any soil pollution, the buyer should not conclude from this that there is indeed no soil pollution. He will therefore not receive a warranty. However, the seller is not excused from liability either. By declaring that he is not aware of something, the seller does not pass on the risk to the buyer. See also the notes to Articles 6.3 and 6.4.1. The allocation of risks is a matter of agreement between the parties. A statement by a party that it is not aware of something is a statement of fact, not an agreement. After all, there is no point in debating whether you know or do not know something.

Article 7 Actual transfer (giving possession) / Transfer of claims
7.1. *The actual transfer and acceptance shall take place at the time of signature of the transfer deed as referred to in Article 4.1, unless the seller and the buyer agree to another time, free from tenancy, lease, rent and/or hire purchase agreements, with the exception of the following agreements, which shall be honoured by the buyer:*
-
-
7.2. *Except as otherwise provided or required by Article 7.1, the seller warrants that, at the time of actual transfer, the immovable property is not subject to any rights of use, is not subject to any claim by a local authority and is vacant and cleared of all movable property, with the exception of any movable property included in the sale.*
7.3. *If the buyer accepts the immovable property, or part of it, subject to continuation of existing tenancy, lease, rent or hire purchase agreements:*
a. the seller warrants that, at the time of actual transfer, he has not received any payments for future instalments and no such instalment payments have been seized;
b. the seller warrants that, from the time of conclusion of this sales contract, existing tenancy, lease, rent and/or hire purchase agreements will not be amended, and no part of the immovable property will be let, sold under a hire purchase agreement, or made available for use by third parties in any other way without the buyer's consent in writing; and
c. the buyer declares that he is acquainted with the contents of the aforesaid tenancy, lease, rent and/or hire purchase agreements to be taken over.
7.4. *This sales contract includes, as far as possible, the transfer of all rights which the seller is or will be able to assert in respect of the immovable property vis-à-vis third parties, including builders, contractors and subcontractors, fitters, architects and suppliers, e.g. on account of work performed or damage caused to the immovable property, without the seller being obliged to grant any indemnity. The said transfer will take place with effect from the date of the transfer of*

ownership. If the actual transfer takes place on a date before the date of signature of the transfer deed, the aforesaid rights shall be transferred with effect from such earlier date. In the latter case, the seller undertakes to furnish the buyer with the relevant information of which he is aware and the seller hereby authorizes the buyer, as far as necessary, to notify the third parties in question of this transfer of rights in accordance with the statutory provisions, at the buyer's expense.

Article 7
The actual transfer takes place when the keys are handed over and the property sold is taken into possession. This article states that the property is transferred when the notarial transfer deed is signed, except if the seller and the buyer have agreed a different time. It also provides that the property is transferred without any existing tenancy, lease, rent and/or hire purchase agreements, with the exception of any agreements specified in this article. Please note that this does not only concern the question of whether the immovable property (or part of it) is let or rented, but also whether the seller has rented or leased to certain items such as the central heating boiler or the kitchen. Articles 6.10 and 7.3 do not apply if the immovable property is transferred without any existing tenancy, lease etc. agreements.
If the seller and the buyer agree a different time for the actual transfer of the property, it is generally sensible to make additional agreements, for example with respect to the time when the risk passes to the buyer (Article 10). In that case you should consult your insurance company and mortgage lender in advance.

Article 7.4 provides that all claims which the seller can assert with respect to the property pass to the buyer. Examples include warranties in respect of conversion work, double glazing or roof covering. Please note that the list provided in Article 7.4 is not exhaustive. If the SWK guarantee and warranty scheme, Woningborg, Bouwgarant or GIW applies to the immovable property, the guarantee or warranty in question automatically passes to the buyer. Information about the time limits and the procedure to be followed can be found in the warranty scheme in question.

Article 8 Benefits, liabilities and ground rent
The benefits, liabilities, taxes, levies and ground rent due shall be those of the buyer with effect from .....
The benefits, liabilities, taxes, levies and ground rent for the then current periods shall be settled between the parties on a time-weighted basis as at that date. Such settlement shall be made at the same time as the payment of the purchase price. In so far as taxes and/or levies are charged for the use of the immovable property, these will not be set off between the parties.

Article 8
Article 8 specifies the date on which the benefits (such as rent) pass to the buyer and from which the liabilities, taxes, levies and ground rent due are borne by the buyer. This is usually the date of transfer of ownership of the property, see Article 4. Taxes and/or levies for the use of the immovable property are not settled between the seller and the buyer. If the seller moves to another municipality, the seller is usually entitled to exemption from the taxes and/or levies for the use of the immovable property for the remaining full months of the year. If the seller moves to another residence within the same municipality, the assessment usually remains in force. For more information on taxes and/or levies for the use of the immovable property, consult your municipality.

Article 9 Joint and several liability
The following shall apply if the seller and/or the buyer consist(s) of two or more natural persons or legal entities:
a. the natural persons or legal entities who jointly constitute the seller or, as the case may be, the buyer may exercise the rights and perform the obligations arising to them under this sales contract only jointly;
b. the natural persons or legal entities who jointly constitute the seller or, as the case may be, the buyer hereby irrevocably authorize each other to exercise the rights and perform the obligations arising to them under this sales contract on each other's behalf; and
c. the natural persons or legal entities who jointly constitute the seller or, as the case may be, the buyer shall be jointly and severally liable for the obligations arising under this sales contract.

Article 9
The practical effect of this article is that if the property is sold or bought by two or more persons (for example, spouses or heirs), it will suffice to address only one of them. Thus, if a letter is sent to one of three buyers, all three buyers are deemed to have been sufficiently informed. Consequently, the party consisting of several persons acts as one person vis-à-vis the contracting party.

Article 10 Passing of risk. Damage due to force majeure
10.1. *The risk of the immovable property shall pass to the buyer upon signature of the transfer deed, unless the actual transfer takes place at an earlier date, in which case the risk shall pass to the buyer at such earlier date.*
10.2. *If the immovable property is damaged or destroyed in whole or in part before the time when the risk passes to the buyer, the seller shall be required to notify the buyer accordingly without delay.*
10.3. *If the immovable property is damaged or destroyed in whole or in part due to force majeure before the time when the risk passes to the buyer, this sales contract shall be cancelled by operation of law, unless either of the following occurs within four weeks of the contingency but in any case before the agreed date of transfer of ownership:*
a. the buyer demands specific performance of this sales contract, in which case the seller shall transfer the immovable property to the buyer in its 'as is' condition on the agreed date of the transfer of ownership - in return for no special

consideration other than the agreed purchase price - along with all rights that the seller may assert in respect of the contingency vis-à-vis third parties, either under insurance contracts or on any other account. Such rights shall be transferred in accordance with the provisions of Article 7.4; or
b. the seller agrees to repair the damage at his expense before the agreed date of the transfer of ownership or, if the contingency occurs during the four weeks prior to the agreed date of the transfer of ownership, within four weeks of the date of the contingency. In the latter case, any earlier agreed date of transfer of ownership shall be deferred to the day following the day on which those four weeks have expired after the contingency. If the repairs are not made to the satisfaction of the buyer, this sales contract shall be cancelled unless the buyer declares within fourteen days of the date on which the repairs should have been completed pursuant to this article that he still wishes to exercise the right granted to him in clause (a) of this Article 10.3, in which case the legal transfer shall take place at the agreed date or, if the contingency occurs during the four weeks prior to the agreed date of legal transfer, no later than six weeks after the contingency.
If both the seller and the buyer declare that they wish to exercise the rights granted to them in Article 10.3, the buyer's choice shall prevail.
***10.4.** If the buyer cancels the purchase after the transfer of ownership on good grounds, as referred to in Section 10(3) in Book 7 of the Dutch Civil Code, the risk shall remain with the buyer contrary to the provisions of that Section until such time as the property is transferred back to the seller, if and to the extent that the buyer has taken out insurance to cover such risk or, failing this, if and to the extent that such risk is usually covered under a regular building insurance policy taken out for a property such as the property sold. The provisions of Section 10(3) and (4) in Book 7 of the Dutch Civil Code shall remain applicable in respect of the other risks for which the buyer has not taken out insurance and which are not usually covered under an insurance policy taken out for a property such as the property sold.*

Article 10
Article 6 of the sales contract provides that the immovable property must be transferred in the condition in which it is when the sales contract is signed. A lot can happen between that moment and the time of the transfer of ownership as a result of which the condition of the property may change. The risk of the immovable property does not pass to the buyer until the notarial transfer deed is signed. As the time of signature of the transfer deed is decisive, the seller should not terminate his building insurance before then. The reason for this is that the risk does not automatically pass to the buyer if the transfer is postponed through any act or omission of the buyer. If the actual transfer precedes the legal transfer, the buyer bears the risk from the time of the actual transfer, in which case the buyer should take out a building insurance policy with effect from that time. However, the buyer may cancel the sales contract after the transfer. If Section 10(3) in Book 7 of the Dutch Civil Code were applicable in that case, the seller would still be liable for the risks associated with the immovable property, as a result of the cancellation of the sales contract. This could have major consequences for the seller because the seller will no longer have an insurance policy covering the property sold after the transfer. To prevent a situation where certain risks associated with the immovable property pass back to the seller after the buyer has cancelled the sales contract on good grounds, the applicability of Section 10(3) in Book 7 of the Dutch Civil Code is excluded in respect of those risks that are covered by a regular building insurance policy. Those risks therefore remain with the buyer, who will be insured against those risks.
Article 10 sets out what should be done in case of force majeure (such as lightning strikes or arson), i.e. in circumstances that are beyond the control of the seller and the buyer. For example, if the property, or part of it, is destroyed by fire before the transfer of ownership, the parties will no longer be bound by the sales contract. But if the buyer still wants to buy the property, the seller must also transfer the rights under the building insurance policy to the buyer. The seller may also to take such measures as to ensure that ownership of the immovable property is transferred in accordance with the sales contract.
In that case, the seller must notify the buyer in a timely manner that he will repair the immovable property for his own account before the agreed date of transfer of ownership (or within four weeks of the force majeure event, whichever is later).
If a situation as referred to in this article arises, the parties would be well-advised to confer with each other first. If the parties are unable to agree on an acceptable solution, they may ultimately opt for cancellation of the sales contract. It is sensible to record such an agreement in writing.

Article 11 Notice of default / Cancellation
***11.1.** If either party, after receiving a notice of default, is or remains in breach of any of its obligations under this sales contract for a period of eight days, the other party may cancel this sales contract without court intervention by sending a written notice to that effect to the defaulting party.*
***11.2.** Cancellation on account of breach or non-performance shall be possible only after notice of default has been served. If the sales contract is cancelled on account of negligent or intentional breach, the defaulting party shall be liable to pay a penalty of ten per cent (10%) of the purchase price to the other party without court intervention, which penalty shall be immediately due and payable, without prejudice to the right to claim additional compensation if the amount of the loss or damage actually suffered or incurred exceeds the penalty which is immediately due and payable, and without prejudice to the right to claim compensation for costs of recovery.*
***11.3.** If the other party does not exercise its right to cancel the sales contract and demands specific performance of the sales contract, the defaulting party shall, on expiry of the eight-day period referred to in Article 11.1, be liable to pay a penalty to the other party equal to three per mille (3‰) of the purchase price, subject to a maximum of ten per cent (10%) of the purchase price, for each day on which the breach continues thereafter until the day of performance, which penalty shall be immediately due and payable, without prejudice to the right to claim additional compensation if the amount of the loss or damage actually suffered or incurred exceeds the penalty which is immediately due and payable, and without prejudice to the right to claim compensation for costs of recovery.*
If the other party subsequently cancels the sales contract, the defaulting party shall be liable to pay a penalty equal to ten per cent (10%) of the purchase price less the amount already paid in daily penalties, without prejudice to the right to claim additional compensation if the amount of the loss or damage actually suffered or incurred exceeds the penalty which is immediately due and payable, and without prejudice to the right to claim compensation for costs of recovery.

11.4. *If the defaulting party meets its obligations within the aforesaid eight-day period after having received a notice of default, the defaulting party shall nevertheless be required to compensate the other party for the loss or damage suffered or incurred by the other party as a result of late performance.*
11.5. *The civil-law notary is hereby obliged and, as far as necessary, irrevocably authorized by the parties to do the following:*
a. if the buyer is liable to pay a penalty: to pay the amount of the penalty to the seller from the amount paid under the bank guarantee to the civil-law notary or from the deposit held by the civil-law notary;
b. if the seller is liable to pay a penalty: to return the bank guarantee furnished to the civil-law notary to the banking institution, or to refund the deposit paid by the buyer to the civil-law notary to the buyer;c. if the circumstance referred to in Article 5.3 arises: to pay the amount of the bank guarantee or the deposit to the seller by way of penalty;
d. if both parties are in breach of their obligations or if the civil-law notary is unable to determine with certainty which party is in breach or whether a breach has occurred: to retain the bank guarantee or deposit until it is determined by a final and non-appealable judgment or a judgment which is enforceable with immediate effect to whom he must pay the amount in question, except if the parties give identical payment instructions.
11.6. *No more penalties can be incurred pursuant to Article 11.2 and/or Article 11.3 as soon as the purchase price has been paid and transfer of the immovable property has taken place. The penalties that have been incurred pursuant to Article 11.3 up to that moment remain due. The circumstance in which no more penalties can be incurred pursuant to Article 11.2 and/or Article 11.3 (after the purchase price has been paid and the immovable property has been transferred to the buyer) does not affect the fact that a party can claim compensation for damages if the statutory requirements for that have been met.*

Article 11
If either party fails to perform his obligations (under the sales contract or at law), such party is in breach of his obligations (breach of contract). This article provides that a party must first establish that the other party is in breach of his obligations before it can take any steps on account of the breach.
It does so by serving notice of default on the other party. This means that the defaulting party is notified by means of an official document that it has failed to meet his obligations. The notice of default must grant the other party a grace period of eight days to meet his obligations. This means that the defaulting party is given one last chance, as it were.

Article 11 provides that a party may cancel the sales contract by sending a written notice to that effect to the defaulting party if the latter has not taken any action during the eight-day grace period. Paragraph 2 of Article 11 imposes a penalty equal to ten per cent of the purchase price on the party in default if the sales contract is cancelled. If the actual loss or damage actually suffered or incurred exceeds the amount of the penalty, the other party may claim additional compensation. The party in default is not always in the clear after paying the compensation for damages. The so-called recovery costs, for example collection charges, may also be claimed.

However, neither the buyer nor the seller has now realized his original intentions. The party which is not in default may therefore demand specific performance of the sales contract (rather than cancellation) once the eight-day period has expired, although that party will want to be compensated for the loss sustained.
To give more weight to his claim, he may demand payment of a daily penalty from the ninth day following the notice of default until the day of performance of the sales contract. The amount of the penalty is three per mille of the purchase price of the property, subject to a maximum of ten per cent of the purchase price, without prejudice to the right to claim additional compensation if the amount of the loss or damage actually suffered or incurred exceeds the penalty which is immediately due and payable, and without prejudice to the right to claim compensation for costs of recovery. If the party claiming performance of the contract subsequently decides to cancel the sales contract after all, the defaulting party must pay a penalty of ten per cent of the purchase price less the daily penalties already paid (as provided in Article 11.3), but without prejudice to the right to claim additional compensation if the amount of the loss or damage actually suffered or incurred is higher and without prejudice to the right to claim compensation for costs of recovery. If a defaulting party which has received notice of default subsequently meets his obligations, the other party is still entitled to claim compensation for any loss or damage it has suffered or incurred.

If the penalty due leads to an excessive and unacceptable result in the given circumstances, the court may mitigate the penalty. The court will not only have to take into account the relationship between the actual damage and the amount of the penalty, but also the nature of the agreement, the content and the object of the clause and the circumstances under which it was invoked.

Article 11.6 provides that the penalty regime as contained in Articles 11.2 and 11.3 will lose effect as soon as the purchase price has been paid and the buyer has become the owner of the immovable property (because the notarial transfer deed has been registered in the public registers). If a party has incurred penalties before that, based on Article 11.3, these penalties remain due. If it later appears that there is a breach of contract (for example because the immovable property does not have the actual characteristics as described in Article 6.3), no penalty may be claimed, but it may be possible to claim compensation for damages pursuant to the provision of the Dutch Civil Code.

Article 12 Address for service
This sales contract shall be sent to the civil-law notary and the parties shall designate the office of the civil-law notary as their address for service for the purposes of this sales contract.

Article 12
Giving an address for service means designating an address at which service of any document relating in any way to a juristic act will be effective. A letter received at that address is deemed to be received by each of the parties. An address for service is mainly intended as a backup. If a party cannot easily be contacted, the other party can nevertheless always reach him officially.

It may also be important to prove that a particular letter has been sent. In that case, it is often convenient to send the letter both to a party's home address and to his address for service.

Article 13 Registration of the sales contract
The parties instruct/do not instruct the civil-law notary to arrange for the registration of this sales contract in the public registers as soon as possible. Registration will not take place before …….*
The costs associated with this registration shall be borne by the buyer/seller.*

Article 13
Once the sales contract has been signed by both parties, it can be registered in the public registers. Article 13 states whether or not the parties choose to do so. The civil-law notary will take care of the registration upon receipt of the sales contract.
As a result of the registration of the sales contract in the public registers, any subsequent bankruptcies, transfers, seizures, and any compulsory purchase rights of the local authority created at a later date cannot be invoked against the buyer. Registration therefore has a dual function: registration by virtue of the Dutch Civil Code (as protection against subsequent bankruptcies, transfers and seizures) and registration by virtue of the Dutch Local Authorities (Compulsory Purchase) Act (Wet voorkeursrecht gemeenten) (as protection against compulsory purchase rights created at a later date).
If the execution of the transfer deed (see Article 4) is scheduled for a date more than six months after the purchase of the property, the parties should seek advice on the best time of registration, as the registration is valid for six months only. The registration has a term of validity of six months. It should be noted that even if the civil-law notary is not immediately instructed to arrange for the registration of the sales contract, the buyer remains entitled to do so for his own account. This also applies to the registration of the sales contract at a date prior to the date specified in the sales contract.

Article 14 Parties' identities
The buyer and the seller agree that if either party requests the other party to prove his identity, the other party shall do so by showing a valid identity document.

Article 14
It is in the interests of both the buyer and the seller that the purchase and sale transaction is brought to a successful conclusion. It may therefore be important to know who the other party exactly is. For that reason, the buyer and the seller may each require the other to prove his identity. The civil-law notary will also ask the parties to provide identification so that he will be able to prepare the transfer deed. The following are acceptable as identity documents: a valid passport, a valid Dutch identity card, a valid Dutch driving licence and a valid Dutch aliens document (residence permit).

Article 15 Resolutory conditions
15.1. *This sales contract may be cancelled by the buyer if:*
a. the buyer does not, on or before ....., receive a binding offer for a mortgage loan or a mortgage loan offer from a recognized credit institution to finance the immovable property for an amount of .....,
in words: ……. , involving a gross annual mortgage payment of not more than ..... in words: ……., or at an interest rate of no more than ..... , with the following type of mortgage:.....
For the purposes of this article the term 'banking institution' shall mean a bank or insurance company as defined in Section 1:1 of the Dutch Financial Supervision Act (Wet op het financieel toezicht); or
b. the buyer does not, on or before ....., obtain a National Mortgage Guarantee (Nationale Hypotheek Garantie) corresponding with the mortgage loan applied for; or
c. on ……. the report of a structural survey performed by ……. (name of surveyor) shows that the costs of the immediately required repair of defects and overdue maintenance exceed an amount of €....., in words ……., or if an additional specialist survey is recommended. If the surveyor uses a bandwidth in the repair costs for parts of the report, the highest amount will be assumed.
15.2. *Either party may cancel this sales contract if the seller is unable, pursuant to the Dutch Local Authorities (Compulsory Purchase) Act (Wet voorkeursrecht gemeenten), to transfer ownership of the immovable property at the agreed date. The seller is obliged, as soon as it is evident that the seller is unable, pursuant to the said Act, to meet his transfer obligation or to meet such obligation in time, to notify the buyer accordingly in writing.*
15.3. *The parties undertake to each other to make every reasonable effort to obtain the aforesaid permit and/or funding and/or National Mortgage Guarantee and/or commitment(s) and/or other items.*
The party invoking the right to cancel must ensure that the other party or the other party's estate agent receives the notice of cancellation on or before the ..... working day following the date referred to in the resolutive condition in question.
Such notice must be adequately substantiated by documentation and be given in writing using a generally accepted means of communication. If the buyer wishes to invoke the right to cancel because of the inability to secure funding (in a timely manner) as referred to in clause a. of Article 15.1, the expression 'adequately substantiated by documentation' means that one rejection from a recognized credit institution must be submitted to the seller or the seller's estate agent, except as otherwise agreed between the parties. In addition, / In derogation of this provision, the parties agree that the buyer must submit the following document(s) to meet the requirement of 'adequately substantiated by documentation': ……If the buyer wishes to invoke the termination as a result of the structural survey as referred to in Article 15.1 under c, 'well documented' will be taken to mean that a copy of the survey report, which includes an overview of the costs for the necessary repair of defects and the overdue maintenance, is submitted to the seller or his estate agent. In that case, both parties shall be released from this sales contract. Any payments already made by the buyer shall then be refunded. Those holding the funds so paid are hereby obliged and, as far as necessary, irrevocably authorized to make such a refund.*

Article 15
One or more dates for resolutive conditions may be entered in Article 15.1. A resolutive condition (comparable to the common law concept of condition subsequent) allows one or more parties to cancel the sales contract in specific circumstances. For example, if the buyer is unable to succeed in obtaining the finance (a), does not obtain a National Mortgage Guarantee (b) or a structural survey has a negative result (c). Realistic time frames should be set, taking due account of the processing times for obtaining finance, or the National Mortgage Guarantee or to have a structural survey carried out.

In addition to the resolutive conditions for the financing, the National Mortgage Guarantee and the structural survey as referred to in Article 15, paragraph 1, the parties can agree on other resolutive conditions. It is important that all agreed resolutive conditions are properly laid down in the sales contract.

In connection with the mortgage guideline, a money lender is not allowed to provide a provisional offer, i.e. a conditional offer. Pursuant to the guideline, the money lender makes a binding offer. Pursuant to the new rules, the money lender makes a binding offer, being an unconditional offer. As a result, the money lender must have all the required details of the buyer prior to issuing the binding offer, such as income details, an employer's statement and a valuation report. In connection with the term of the resolutive condition for the financing, it is therefore important that the buyer provides all the required documents as soon as possible.

The gross annual mortgage payment is the total amount of mortgage repayments, interest and (risk) premiums paid in a particular year, as well as any additional repayments in connection with the National Mortgage Guarantee.

The buyer can also waive one or more resolutive conditions, for example because the seller does not agree to a resolutive condition. However, there are risks attached to that. For example, if the parties do not agree a resolutive condition for financing and delete Article 15.1 under a, this has the result that if the buyer needs a loan and is unable to acquire one, this does not constitute reason to terminate the purchase contract. The success or failure of the financing of the immovable property is then entirely at the buyer's expense and risk. The waiver of the reservation of a structural survey has a comparable result. If the parties choose not to use the resolutive condition for a structural survey by deleting Article 15.1 under c, this has the result that the buyer cannot terminate the purchase agreement if the costs of immediately required repair of defects and overdue maintenance are higher than what he had counted on. Incidentally, the seller may then still be liable for hidden defects pursuant to the purchase agreement or the law.

Paragraph 3 contains a best efforts obligation requiring the parties to use their best efforts to obtain the funding and/or National Mortgage Guarantee, commitments and/or other items.

However, cancellation of the sales contract is not an automatic process: the party cancelling the contract must notify the other party accordingly. The parties must agree within how many working days from the date of expiry of the resolutive condition the other party (or the other party's estate agent) must be in receipt of the notice of cancellation. Saturdays, Sundays and public holidays do not count. On expiry of the period referred to in Article 15.1 it is known whether a resolutive condition can be invoked. On expiry of the period referred to in Article 15.3 it is known whether a resolutive condition has in fact been invoked.

The notice of cancellation must be "adequately substantiated by documentation and be given in writing using a generally accepted means of communication". 'Written' means that a telephone call is not enough. What "adequately substantiated by documentation" means depends on the nature of the resolutive condition in question. The sales contract contains a standard clause providing that the buyer must submit one rejection in order to be able to invoke the financing contingency. This will usually be sufficient. Credit institutions are strictly bound by the Dutch Financial Supervision Act (Wet op het financieel toezicht). This means that a rejection from a credit institution can be assumed to be based on a thorough assessment of the buyer's financial situation, even if the rejection is worded concisely. The conditions for acceptance used by credit institutions have converged to a large extent as a result of codes of conduct and legislation. Consequently, an application filed with a second credit institution will most likely also result in a rejection. In addition, a commission ban was introduced on 1 January 2013. This means that a buyer must pay consultancy fees to a mortgage consultant or credit institution. If it is clear after one rejection that the buyer is unable to secure financing, he can hardly be expected to pay consultancy fees again only to receive a second rejection. Moreover, the time factor may be an issue if, after the first rejection, the whole process must be gone through again. The time limits imposed by the resolutive conditions may be too short to permit this. For these reasons it is usually sufficient to submit one rejection in order to be able to cancel the sales contract on good grounds. However, the parties are free to agree that several rejections must be submitted, or that the buyer must submit one or more other relevant documents which he has at his disposal or which he should reasonably be able to obtain. If the parties wish to use this option, the required documents can be entered on the dotted line in Article 15.3. The documents in question may include a photocopy of the mortgage loan application, photocopies of salary slips etc. If the buyer wishes to invoke termination as a result of the structural survey as referred to in Article 15.1 under c, 'well documented' will be taken to mean that a copy of the survey report, which includes an overview of the costs for the immediately necessary repair of defects and the overdue maintenance, is submitted to the seller or his estate agent.

"Using a generally accepted means of communication" means, for instance, a notice sent by registered letter. The advantage of this is that the sender automatically obtains proof of delivery of the notice. However, if the seller and the buyer have communicated by e-mail (either through their estate agents or otherwise), this may also be an 'accepted means of communication' for the parties in question.

Article 16 Cooling-off period

If the buyer is a natural person and does not act in the course of a business or profession, a cooling-off period shall apply within which this sales contract may be cancelled. The cooling-off period is three days, starting at 0:00 am on the day following the day on which (a copy of) the sales contract, duly signed by the parties, is handed to the buyer.
If the cooling-off period ends on a Saturday, Sunday or public holiday, it will be extended to the first day which is not a Saturday, Sunday or public holiday.
Where necessary, the cooling-off period will be extended such that it includes at least two days not being a Saturday, Sunday or public holiday.
If the buyer wishes to cancel the sales contract within the cooling-off period, he must ensure that the cancellation statement reaches the seller or his estate agent before the end of the cooling-off period.

Article 16
A consumer who buys a residence is entitled to a cooling-off period of three days in which he may decide to cancel the purchase. This cooling-off period follows from the law in nearly all cases. This statutory cooling-off period may not be reduced. However, the parties may agree to extend this cooling-off period.
There is no statutory cooling-off period for the seller. But the parties may agree the seller, too, is allowed a cooling-off period. The cooling-off period starts at the beginning of the day following the day on which the buyer receives a copy of the sales contract, duly signed by both parties. Usually, the seller or his estate agent give the buyer a copy of the sales contract immediately after both parties have signed it. The seller or his estate agent will ask the buyer to sign an acknowledgement of receipt. This document must be dated so that it is clear when the buyer has received the copy of the sales contract. It is not absolutely necessary that the (copy of the) sales contract is handed to the buyer personally in order for the cooling-off period to start. Although hand delivery of the sales contract is preferable, it may also be sent by post, e.g. by registered letter. If the sales contract is not delivered by hand but sent by post, it should be sent both to the buyer's home address and to his address for service (see Article 12).

If the buyer wishes to cancel the sales contract within the cooling-off period, he must ensure that the cancellation statement reaches the seller or his estate agent before the end of the cooling-off period. The law does not prescribe how the buyer should notify the seller that he cancels the sale. However, it is advisable to cancel the purchase in a verifiable manner, for example by registered letter. The address for service (see Article 12) is of great importance in order to be able to make optimum use of the cooling-off period. If the buyer wishes to dissolve the sales contract at the last moment, but the buyer or his estate agent is unavailable, he can inform the civil-law notary of the dissolution. As a result of the address for service, notification that the sales contract is dissolved will be deemed to have reached the seller. This is particularly important in view of the ability to furnish proof.

Article 17 Written form requirement
17.1. *No obligations shall arise under this sales contract until both parties have signed this sales contract.*
17.2. *The party that is the first to sign this sales contract does so subject to the reservation that he is bound thereby only if he receives (a copy of) the sales contract, duly signed by both parties, on or before the ... working day following the day on which the first party signs the sales contract. If the first signatory does not receive (a copy of) the sales contract, duly signed by both parties, within the specified time limit, the party in question shall have the right to invoke the aforesaid reservation, as a result of which that party shall not (or no longer) be bound by its signature. This right shall lapse if it is not exercised on or before the second working day after (a copy of) the sales contract, duly signed by both parties, is subsequently received.*

Article 17
It is usually a legal requirement that both parties sign the sales contract. Normally, the parties will do so immediately after each other. However, on occasion some time may elapse between the time when the first party signs the sales contract and the time when the second party signs it, for example if one party sends the contract to the other party by post. The aim of Article 17.2 is to avoid a situation where the parties keep each other in suspense for an unnecessarily long period. If the first party signing the sales contract does not receive a copy of the contract, duly signed by the other party, within the agreed time limit, the first party may decide not to proceed with the transaction, provided that this decision is made within two working days. This is, of course, not an obligation but a free choice. There are no requirements set for the way in which the first signatory must dissolve the contract. Of course, it is wise to do this in a way that can be demonstrated later.

Article 18 Dutch law
This sales contract shall be governed by the laws of the Netherlands.

Article 18
The aim of this article is to avoid any misunderstanding as to the governing law between parties to the sales contract with different nationalities. By declaring that Dutch law applies, the parties agree that the Dutch courts have jurisdiction to resolve any disputes arising out of the sales contract.

Article 19 Schedules
The following schedules form part of this sales contract:
- Explanatory notes to the sales contract for consumers;
- List of items of property pertaining to the sales contract;
- Questionnaire for sale of residence;
- Acknowledgement of receipt;
.....
.....

Article 19
The seller can state here which schedules form part of the sales contract.

Article 20 Additional agreements.
……

Article 20
Article 20 can be used to include additional provisions dealing with matters agreed between the parties but not included as standard provisions in this sales contract. It is essential to formulate and describe these additional provisions as accurately as possible. An estate agent can assist with this.

*) The text in the text boxes is taken from the sales contract and is included in these notes for information purposes only. Fields in this text should not be completed.

Read and understood:

Seller(s)

_____	_____
name:	name:
place:	place:
date:	date:

Buyer(s):

_____	_____
name:	name:
place:	place:
date:	date:

Provided by estate agency: