

# Residential Building Work Insurance Licensed Builder (ACT)



## **SECTION 1 - INTRODUCTION**

This Residential Building Work Insurance policy is underwritten by Lumley General Insurance Limited. ABN 24 000 036 279 and consists of this policy wording and a Certificate of Insurance. They are important documents and provide proof of contract between You and Us. Please keep them in a safe place.

This policy is issued in compliance with the Act and the Regulations and if any term of the policy conflicts or is inconsistent with the Act and the Regulations then the policy must be read and be enforceable as if it complies with the Act and the Regulations.

Please read the policy and Certificate of Insurance carefully and together to ensure that You fully understand them and that they provide You with the protection that You need.

The policy is for the period of insurance and will not be renewed and is not of a type that is renewable, nor is it cancellable except in those circumstances detailed in Section 4.5.

If it is not completely in accordance with Your intentions or You are in doubt as to the meaning or effect of the wording, please contact Your Broker, legal representative or Us immediately for clarification.

Some of the words in the policy have specific meanings. You should refer to Section 3 for the definitions of those words.

## **SECTION 2 – IMPORTANT NOTICES**

### **2.1 Your Duty of Disclosure**

We rely on the truth of what the Builder tells Us in providing You with this cover and separately what You tell Us when and if You make a Claim. We will not avoid Your Claim

or refuse to make or limit payment under Your Claim solely on the grounds that the Builder:

- (i) failed to comply with any duty of disclosure;
- (ii) made misrepresentations to Us;

In the event that We make a payment under this policy in the circumstances in which this clause applies, We are entitled to seek recovery of such payment, including any fees and charges incurred, from the Builder or the person required to make the payment.

### **2.2 Regulatory Notification**

We may notify the Construction Occupations Registrar, the ACT Planning and Land Authority or other regulatory authority at the times and in the manner agreed with the Construction Occupations Registrar, the ACT Planning and Land Authority or other regulatory authority:

- (a) if We refuse the Builder cover for Residential Building Works at the Building Site;
- (b) if the Builder ceases to become eligible to renew or purchase insurance cover;
- (c) of each Claim made under the policy including but not limited to:
  - (i) the details or nature of the Claim;
  - (ii) the end result of the Claim;
  - (iii) the amount paid under the Claim, and
  - (iv) action taken in relation to or as a result of the settlement of the Claim.

### **2.3 Certificates of Insurance**

When We issue this policy, We will provide You with a Certificate of Insurance stating the policy has

been issued in compliance with the Act and the Regulations. At Your or the Builder's request, We will also provide a copy of the policy, the Certificate of Insurance and any associated document to the policy.

### 2.4 Privacy

We are committed to ensuring the confidentiality and security of personal information. We may disclose personal information to:

- a State or Federal Authority, an assessor or investigator (for the purpose of assessing or investigating Your Claims);
- a lawyer or recovery agent (for the purpose of defending an action by a third party, the Builder or You against You or Us or for the purpose of recovering Our costs);
- another insurer or a reinsurer (for the purpose of seeking recovery from them or to assist them to assess insurance risks);
- an insurance reference bureau (for the purpose of recording any Claims You make upon Us); and
- other service providers (only for a purpose in connection with this insurance).

Personal information may also be obtained about You or Your Employees from the above people or organizations. We will give You and Your Employees the opportunity to correct this personal information, or obtain access to it.

We will provide Our dispute resolution procedures to You in respect of any complaint You may have regarding Your personal information. You may request access to information held by Us about You, by contacting Us. Our and Our Group's Privacy statements are also available on Our Website

[www.lumley.com.au](http://www.lumley.com.au) in the Compliance link.

### 2.5 Goods and Service Tax (GST)

If this policy is subject to payment of Goods and Services Tax in relation to the premium then You will pay that tax.

### 2.6 Our Code Of Practice

We subscribe to the General Insurance Code of Practice that sets the standards of practice and service for the insurance industry. It is Our aim to provide a quality service to You, Our customer. However We recognize that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

If after talking to Us, You wish to take the matter further, please ask for the matter to be referred to Our Code Compliance Manager. We have a complaints and dispute resolution procedure that undertakes to provide an answer to Your matter within 15 working days provided We have all the information We need. We also undertake to inform You of Your alternatives should You still not be happy with Our answer.

You also have the right to appeal Our decision in relation to a Claim to a court of competent jurisdiction. Please refer to Section 7.3.

### 2.7 Severability Clause

Some provisions and terms of this policy have been inserted in the policy due to the requirements of the Act and the Regulations. Should it be found by a court that any provision or term of this policy, is invalid or not in accordance with the Act or the Regulations or that the Act or the

Regulations is invalid then the provision or term of the policy shall be deemed to be severed from this policy and not binding upon the Insurer or the Insured. The remainder of the policy shall remain in full force and effect.

### SECTION 3 - DEFINITIONS

For the purposes of this policy, the following words have special meanings. Where also appearing in the Act or the Regulations, they are consistent with the Order. If there is any discrepancy, the definition contained in the Act or the Regulations will apply. The defined words are shown in the policy with the first letter capitalised. Words in the singular includes the plural and vice versa. The defined word includes derivatives of the word.

**Act** means:

The *Building Act 2004 (ACT)*.

**Builder** means:

The person:

- (a) stated to be the Builder in the Commencement Notice issued for the Residential Building Work; and
- (b) that in the case of Residential Building Work provides, has provided or that proposes to provide a Building Service.

**Building Owner** means:

The person for whom the Residential Building Work has been or is being carried out, managed or arranged.

**Building Service** means:

The doing or supervision of Residential Building Work

**Building Site** means:

The place where Residential Building Work is being, has been, or is about to be, carried out.

**Certificate of Insurance** means:

The certificate We issue to You evidencing that cover for the Domestic Building Work has been issued by Us.

**Claim** means:

For the purposes of this policy, written notice made by You on Our Claim form of any Defect, breach of a Statutory Warranty or failure by the Builder to comply with the requirements of the Residential Building Contract.

**Claim Form** means:

Our approved Claim Form in addition to all information required to be provided by You to Us as detailed in Our Claim Form.

**Commencement Day** means:

The earlier of:

- (a) the date the relevant Residential Building Contract was entered into; or
- (b) the date of issue of the Commencement Notice to the Builder for the performance of the Residential Building Works at the Building Site.

**Commencement Notice** means:

A notice required by and as detailed in Division 3.4 of Part 3 of the Act:

**Common Property** means:

Property in any subdivision that vests in You and other owners as tenants in common in shares proportional to Your unit entitlement as defined in the *Unit Titles Act 2001 (ACT)*.

**Completion Date** means:

- (a) the day
  - (i) the Residential Building Work required to be performed by the Builder under the Residential Building Contract is completed; or
  - (ii) the Residential Building Contract is ended; or
- (b) without limiting clause (a), the date of issue of the certificate of occupancy for the Residential Building.

**Dead** means:

For the purposes of this policy Dead includes:

- (a) in the case of a Builder who is not a company or a body corporate, the death of the Builder or all of the partners in the Builder; or
- (b) in the case of a company or body corporate, the appointment of a liquidator to that company pursuant to the *Corporations Act 2001 (Cth)*.

**Defective** means:

In relation to Residential Building Work:

- (a) a breach of a Statutory Warranty; or
- (b) a failure to maintain a standard or quality of Residential Building Work specified in the relevant Residential Building Contract.

**Developer** means:

means a person or entity for whom the work is done in a Building or residential development where 4 or more of the existing or proposed Residential Buildings are or will be owned by the person or entity.

**Disappears** means:

Not being able to be found after due search and enquiry.

**Insolvent** means:

The same as it does in the Act, namely that, a Builder is taken to be Insolvent if the Builder:

- (a) becomes bankrupt; or
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for their benefit

**Multi-Storey Residential Building** means:

A building that has a rise in Storeys of more than 3.

**Non-Structural Element** of a Residential Building means:

A component of a Residential Building that is not a Structural Element.

**Reasonable Legal Costs and Expenses** means:

- (a) Costs incurred after the later of:
  - (i) the date which You lodged the Claim with Us together with all reasonable information and evidence (as determined by Us) in support of that Claim; and
  - (ii) the expiration of 90 days following the date you lodged the Claim, and
- (b) costs calculated on a party/party basis in accordance with the appropriate scale having regard to the quantum of Your loss and damage covered by the policy.

**Regulation** means:

The *Building Regulation 2004 (ACT)*.

**Residential Building** means:

The same as it does in section 84 of the Act, namely:

- (a) a building intended mainly for private residential use, or a part of such a building, if:
  - (i) the building has no more than 3 storeys at any point, excluding any storey used exclusively for parking; or
  - (ii) for a part of a building—the part provides structural support, or is a structurally integral adjunct, to the building

and includes all examples of the definition of Residential Building provided in section 84 of the Act.

**Residential Building Contract** means:

A contract agreed between the Building Owner and the Builder setting out the terms and conditions of agreement for the performance of Residential Building Works by the Builder and the payment

obligations of the Building Owner where the cost (as that term is defined in the Act) exceeds \$12,000.

**Residential Building Work** means:

In relation to a building;

- (a) to build, rebuild, erect or re-erect the Home; or
- (b) making alterations to the Home; or
- (c) to enlarge or extend the Home; or
- (d) to cause any other person to do anything referred to in (a), (b) or (c) in relation to the Home; or
- (e) to manage or arrange the doing of anything referred to in (a), (b) or (c) in relation to the Home.

**Statutory Warranty** means:

The same as it does in Section 88 of the Act, namely that the Residential Building Contract and every Contract of sale for the sale of the Building Site or Residential Building contains a warranty by the Builder that:

- (a) that the Residential Building Work has been or will be carried out in accordance with this Act; and
- (b) that the Residential Building Work has been or will be carried out in a proper and skilful way and;
  - (i) in accordance with the approved plans; or
  - (ii) if the Residential Building Work involves or involved the handling of asbestos or disturbance of loose asbestos (in accordance with approved plans) that those Residential Building Works comply with this Act in relation to the asbestos; and
- (c) good and proper materials for the Residential Building Work have been or will be used in carrying out the Residential Building Work; and

- (d) if the Residential Building Work has not been completed, and the Residential Building Contract does not state a date by which, or a period within which, the work is to be completed, that the work will be carried out with reasonable promptness; and
- (e) if the owner of the land where the Residential Building Work is being or is to be carried out is not the Builder, and the Building Owner expressly makes known to the Builder, or an employee or agent of the Builder, the particular purpose for which the Residential Building Work is required, or the result that the Building Owner desires to be achieved by the Residential Building Work, so as to show that the Building Owner is relying on the Builder's skill and judgment, that the Residential Building Work and any material used in carrying out the Residential Building Work is or will be reasonably fit for the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.

**Storey** means:

The same as it does in section 84 of the Act however does not include:

- (a) a Storey designed or used only for the parking of vehicles; or
- (b) a Storey below the normal ground level.

**Structural Element** of a Residential Building means:

The same as it does in regulation 24(2) of the Regulations, namely

- (a) an internal or external load-bearing component of the Residential Building that is essential to the stability of the Residential Building or any part of it, or
- (b) any component (including weatherproofing) forming part of

the external walls or roof of the Residential Building.

**Variation** means:

A document altering the price or scope of Residential Building Work signed by and agreed between the Building Owner and the Builder under an Residential Building Contract, however for the purposes of this policy, only a written Variation signed by both the Building Owner and the Builder shall be deemed as a Variation.

**We, Our, Us** means:

Lumley General Insurance Limited ABN 24 000 036 279.

**You, Your** means:

- (a) the Building Owner; or
- (b) any person insured under the policy; or
- (c) any person who becomes entitled to the Statutory Warranties; or
- (d) any person who is the owner for the time being of the Residential Building or land in respect of which the Residential Building Work is or was being carried out, managed or arranged;

but does not mean:

- (i) the Builder;
- (ii) a Developer who does Residential Building Work;
- (iii) the Building Owner if the Building Owner is a related body corporate (as defined in the Corporations Act 2001) of the Builder; nor
- (iv) the Building Owner, if neither the Builder nor the Building Owner is a public company but each has a common director or a common shareholder.

## SECTION 4 - THE COVER

### 4.1 Our Agreement

We agree to cover You if the Builder is Dead, Disappears or becomes

Insolvent during the period of insurance, subject to the terms, conditions and exclusions of this policy, if You suffer loss or damage:

- (a) resulting from the non-completion by the Builder of Residential Building Work referred to in the Residential Building Contract; or
- (b) from Defective Residential Building Work performed by the Builder under the Residential Building Contract; or
- (c) resulting from a breach by the Builder of any of the Statutory Warranties; or
- (d) resulting from the failure of the Builder to maintain a standard or quality of Residential Building Work specified in the relevant Residential Building Contract; or
- (e) from the loss of a deposit (or part of a deposit) or loss of any progress payment under the Residential Building Contract where the Residential Building Work has not commenced.

### 4.2 Breadth of Indemnity

The indemnity referred to in clauses 4.1 (a) to (e) inclusive, includes an indemnity in respect of the acts or omissions of all persons who were contracted by the Builder to perform the Residential Building Work under the Residential Building Contract resulting in loss or damage of the kind referred to in clauses 4.1 (a) to (e) inclusive.

### 4.3 Limit of Indemnity

We will not be liable to pay You any more than \$85,000 in the aggregate for any and all Claims made under the policy in respect of any one Home, which amount includes your Reasonable Legal Costs and Expenses incurred in enforcing a successful action in a Court or the Tribunal.

#### 4.4 Period of Insurance

Cover is provided by the policy, subject to the terms, conditions and exclusions of this policy, for:

- (a) Defects in the Non-Structural Element of the Residential Building in respect of loss or damage occurring during the period starting on the Commencement Day and ending 2 years after the earlier of:
  - (i) the Completion Date of the Residential Building Work; or
  - (ii) the date of termination of the Insurable Residential Building Contract.
- (b) Defects in the Structural Element of the Residential Building in respect of loss or damage occurring during the period starting on the Commencement Day and ending 6 years after the earlier of:
  - (i) the Completion Date of the Residential Building Work, or
  - (ii) the date of termination of the Insurable Residential Building Contract.

#### 4.5 Cover Cancellation

The policy when issued cannot normally be cancelled, however in the event that:

- (a) it can be proven that no Residential Building Works have been performed by the Builder under the Residential Building Contract; and
- (b) the Residential Building Contract has been terminated, abandoned or ended by mutual agreement; and
- (c) no Residential Building Works will be performed by the Builder under the Residential Building Contract, and

- (d) We receive written confirmation from both You and the Builder requesting that the policy be cancelled and no reliance will be placed on it by either You or the Builder in the future,

the policy may be cancelled. In the event all of the requirements of 4.5(a) to (d) inclusive are not satisfactorily completed, the policy will not be cancelled even if We do not have any known liability under the policy.

### SECTION 5 - WHAT IS NOT COVERED

We will not pay for any loss or damage, whether direct or indirect, or Your legal liability in respect of:

- (a)
  - (i) any Residential Building Work performed to the remainder of the Residential Building or Building Site other than that noted in the policy, or
  - (ii) any works carried out, managed or arranged or not carried out, managed or arranged by any predecessors to You, by You or by subsequent owners, or
  - (iii) any Residential Building Works which are the subject of any other insurance, guarantee or indemnity; or
  - (iv) Residential Building Work which was not required to be carried out, managed or arranged under the relevant Residential Building Contract.
- (b) Non-completion of Residential Building Work where the Builder's Death, Insolvency or Disappearance occurred before the Builder commenced any Residential Building Work on the Building Site (other than the removal of vegetation) that required the use of any tools or building materials, however this

exclusion or limitation is subject to Your right to recover:

- (i) any money paid in relation to the relevant Residential Building Contract; and
- (ii) all Reasonable Legal Costs and Expenses incurred by the Building Owner in relation to the relevant Residential Building Contract.

However, this clause shall not apply if a Certifier has issued a Building Commencement Notice under section 37 of the Act for the Residential Building Work (if the Builder is or was the Building Owner of the Building Site where the Residential Building Work is to be carried out) where the Builder has transferred ownership of the Building Site to someone else.

- (c) Money paid to the Builder that exceeds the amounts that should have been paid to the Builder in accordance with the Residential Building Contract;
- (d) Related to non-completion of the Residential Building Work where You are a Developer.
- (e) Normal wear and tear of Residential Building Work including but not limited to normal shrinkage of materials or foundations, heave or any movement of earth, rust, corrosion, gradual deterioration, depreciation and/or normal drying out of materials except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (f) Your failure to maintain the Residential Building Work or maintain the appropriate protection against pest infestation or exposure of natural timbers except where this clause limits the operation of the Statutory

Warranty imposed in section 88 of the Act.

- (g) Defects which were evident or were reasonably evident or would have been evident during a reasonable inspection at or prior to the time of purchase of the Residential Building by You or if You or a previous Building Owner of the Residential Building has already been compensated for that loss or damage except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (h) Any act committed or condoned by You relating to the Claim or the Residential Building Works which is dishonest, fraudulent, criminal or malicious except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (i) Penalties, fines, liquidated damages or any other sums imposed against the Builder that relate to the delay on the part of the Builder. This exclusion will not limit any increase in rectification costs caused by the effluxion of time except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (j) Any exemplary or punitive damages awarded by the Tribunal or a Court against either the Builder or You except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (k) Consequential loss, not otherwise covered under this policy except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (l) Bodily injury, death or illness except where this clause limits the operation

of the Statutory Warranty imposed in section 88 of the Act.

- (m) Failure or malfunction in any mechanical or electrical equipment or appliance if the malfunction is not attributable to the workmanship of or installation by the Builder except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (n) Work or materials made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (o) Liability imposed upon the Builder if that liability would not have been imposed upon the Builder in the absence of a Residential Building Contract except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (p)
  - (i) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, civil unrest, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.
  - (ii) Any act of terrorism. For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, committed for political, religious, ideological, ethnic or similar purposes including the intention to influence any

government and/or to put the public or any section of the public in fear.

This clause also excludes loss, damage, liability, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) or (ii) above except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.

- (q) The use, existence or escape of nuclear weapons material, or ionising radiation from, or contamination by radioactivity from, any nuclear fuel or any nuclear waste from the combustion of nuclear fuel, including any self sustaining process of nuclear fission or fusion except where this clause limits the operation of the Statutory Warranty imposed in section 88 of the Act.
- (r) An injury arising, directly or indirectly, out of inhalation or, or fears of the consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos.
- (s) Events that gave rise to a Claim that occurred prior to the Commencement Day
- (t) Residential Building Work performed under any Residential Building Contract related to the construction of a Multi-Storey Residential Building.
- (u)
  - (i) You, if you are the Builder or Developer; or
  - (ii) You, if you are a related body corporate, as defined in the *Corporations Act 2001 (Cth)*, of the Builder, or
  - (iii) You and the Builder if You have a common director or shareholder although both You

and the Builder are not public companies.

- (w) Any costs incurred or loss suffered related to the cost of alternative accommodation and/or storage as a result of an event occurring for which section 4 of this policy applies.

## **SECTION 6 – CLAIMS SETTLEMENT**

We will, at Our discretion, either make good, direct the Builder to make good, or pay the amount assessed by Us as the loss or damage suffered by You subject to the following limitations:

- (a) If Your Claim relates to loss and damage suffered as a result of the non-completion of the Residential Building Works, We may elect to settle Your Claim in full by way of a single payment.
- (b) For any loss or damage You have suffered with regard to an event referred to in Sections 4.1 (b) to (e) inclusive of this policy, You must pay the first \$500 of each Claim made.

A Claim of \$500 or more may relate to more than one Defect if the amount Claimed for one or more defects is less than \$500.

For the purpose of this clause, the date when a Claim is made is the earlier of the date the Claim is made or the date when You first notify Us, in writing, of a circumstance that may give rise to a Claim.

- (c) Despite Section 6(b), You shall only be required to pay the first part of Your Claim once, where:
  - (i) Your Claim comprises more than one Defect; or
  - (ii) two or more Claims that relate to the same Defect.
- (d) In the event the Residential Building Work is carried out, managed or arranged on land in containing Common Property in any description

or form, any Claim paid by Us relating to the Common Property shall be divided by a number equal to the number of all Residential Buildings or units (as that term is defined in the *Unit Titles Act 2001(ACT)*) on the land and the relevant amount referred to in Section 6(b) shall be deducted from that amount for each Home.

The cover so provided extends only to the registered proprietor of the Residential Building identified in the policy and that registered proprietor's unit entitlement within the land in the unit subdivision. No cover is provided to the body corporate, strata scheme or Common Property manager.

- (e) In the event of a Claim made on land containing Common Property, the Strata Scheme, Body Corporate or other Common Property management body shall be entitled to make a Claim only in the capacity as Your agent and the other owners with regard to the Common Property. We are not obliged to make any payment to Your agent in settlement of any Claim made including Your share of the Common Property.
- (f) Where a successful Claim is made by You and We agree to make payment to an alternate Builder to remedy the loss or damage suffered by You, the amount identified in Section 6(b) and payable by You, must firstly be paid by You to the alternate Builder before We will authorise the alternate Builder to commence those rectification works.

## **SECTION 7 - HOW TO MAKE A CLAIM**

### **7.1 Your Obligations**

- (a) You must notify Us of any fact or circumstance that may give rise to a Claim as soon as You

become aware of the fact or circumstance.

- (b) You must take all reasonable precautions to avoid or minimise loss or damage that is covered by this policy.
- (c) In order for Your Claim to have been deemed to have been validly made, You are obliged to notify Us in writing on Our Claim form as soon as You become aware of loss or damage that is insured by this policy but in any event, not later than 90 days after the date that You first became aware of or ought reasonably have been aware of the Death, Disappearance or Insolvency of the Builder.

If You do not notify Us in writing on Our Claim form as required by this clause We may either refuse or limit payment of Your Claim.

- (d) If You make a Claim under this policy:

- (i) You must comply with any reasonable directions that We give You in relation to the completion or rectification of the Residential Building Work or settlement or resolution of Your Claim;
- (ii) You must not undertake or cause to be undertaken, any rectification works without notifying Us unless those works are reasonably necessary to prevent or minimise further loss or damage;
- (iii) You must provide Us or any Builder or other person We nominate, with reasonable access to the Building Site

for the purposes relating to the Claim. However You have the right on reasonable grounds, that includes loss of confidence in the Builder, to refuse to provide this access.

We will not reduce Our liability to You by reason of a failure on Your part to comply with these conditions unless and only to the extent that We can prove that the failure increased Our liability under this policy.

- (f) In the event that You bring any action against the Builder, You are required to notify Us within 30 days of lodging that proceeding in a Court, and to provide to Us all details of the Claim You have made against the Builder in those proceedings.
- (g) In the event that the Builder brings proceedings against You, You are required to notify Us within 30 days of receipt by You of advice of those proceedings from the Builder or a Court and to provide to Us all details of the Claim made against You by the Builder.
- (h) The period for making a Claim under the policy ceases simultaneously with the end of the period of insurance and We will not accept any Claim made after the expiry of the policy.
- (i) If at the time that You make a Claim, there are any monies as assessed by Us as owing by You under the relevant Residential Building Contract, those monies must firstly be applied:
  - (i) toward rectification costs of any Residential and/or

incomplete Residential Building Work, and then

- (ii) toward the costs of any other loss or damage incurred of a nature which is referred to in Section 4.
- (k) You agree not to undertake or cause to be undertaken any rectification works or completion works without notifying Us or Our agent, unless such works are reasonably necessary to prevent or minimise any further loss or damage.
- (l) In the event You make a Claim under the policy, You are obliged to advise Us of all matters that may impact Our decision with regard to that Claim or to the cover provided by the policy. If You fail to advise us of a fact that does alter the cover provided or that would alter the decision We make in respect of any Claim, We may either refuse to pay that Claim or We may seek to recover part or all of the monies already paid to You.

## **7.2 Our Obligations**

If We are given notice of a Defect, such notice is deemed to include every other Defect that is directly or indirectly related to it, whether or not the Claim in respect of such Defect was actually notified to Us or settled.

## **7.3 Dispute Resolution**

- (a) In the event that We make a decision on a Claim and you disagree with any part of that decision, please ask to speak to the manager in the first instance. Should this not resolve Your dispute, We also have an internal dispute resolution panel that is available to You. You also

have a right of appeal to the Tribunal. If you wish to appeal Our decision to the Tribunal You must lodge and file that application with the Tribunal no later than 28 days after receipt by You of our letter of decision for Your Claim.

- (b) Where We have notice of the relevant proceedings We will accept the decision of the Tribunal when any of the events referred to in Clause 4.1 have occurred and if so, are liable for the amount of loss of damage suffered by the Building Owner, or purchaser as the case may be as a result thereof. We maintain our rights to appeal any decision of the Tribunal to a Court of competent jurisdiction.

## **7.4 Subrogation**

In the event that We have the right to recover monies paid or payable under this policy from any other person or entity, You agree to subrogate Your rights to Us to the extent We make payment to You with respect to a Claim and agree to co-operate with Us in any proceedings at law which We may take under that right of Subrogation.



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