

Home Warranty Insurance Residential Building Work Licensed Contractor (NSW)



SECTION 1 COVER

- 1.1 The **Insurer** agrees, subject to the **Policy Limitations** to indemnify the **Insured** in respect of **Insured Loss** which results from an **Insured Event** which occurs during the **Period of Insurance**.

SECTION 2 INDEMNITY FOR INSURED EVENTS

- 2.1 Subject to Section 1.1 the **Insured** shall be indemnified for **Insured Loss** which arises from:
- (a) non-completion of **Residential Building Work** under the relevant **Contract**;
 - (b) a breach of a **Statutory Warranty**, being loss or damage in respect of which the **Insured** cannot recover compensation from the **Contractor** or have the **Contractor** rectify because of the **Insolvency**, death or **Disappearance** of the **Contractor**;
 - (c) faulty design, where the design was provided by the **Contractor**;
 - (d) the non-completion of the **Work** because of early termination of the **Contract** for the **Work** because of the **Contractor's** wrongful failure or refusal to complete the **Work**;
- 2.2 During the **Period of Insurance** and upon the occurrence of an event referred to in Section 2.1 (a) or (b), the **Insured** is indemnified, subject to the **Policy Limitations** for:
- (a) loss of deposit or any progress payment under the relevant **Contract**; and
 - (b) for the costs of alternative accommodation, removal and storage costs reasonably and necessarily incurred.
- 2.3 During the **Period of Insurance** and upon the occurrence of an **Insured Event**, the **Insured** is indemnified, subject to the **Policy Limitations**, for any **Reasonable Costs** incurred by the **Insured** in seeking to recover compensation from the **Contractor** for the loss or damage or in taking action to rectify the loss or damage.
- 2.4 The indemnities referred to and contained in Section 2.1, include an indemnity in respect of the acts and omissions of all **Persons** contracted by the **Contractor** to perform the **Work** resulting in any **Insured Loss**.
- 2.5 The indemnity provided by this **Policy**, covers, subject to the **Policy Limitations**, the **Residential Building Work** carried out by or organised by the **Contractor** and only for the **Works** and if the **Works** are stated in the **Application** and also stated in the Policy Schedule or Certificate of Insurance.
- 2.6 The date of early termination of the relevant **Contract** for the purpose of Section 2.1(d) shall be taken to be the date on which the **Insured** purported to bring the **Contract** to an end whether pursuant to the terms of the **Contract** or pursuant to general principles of law.

SECTION 3 EXCLUSIONS AND LIMITATIONS

- 3.1 The indemnities referred to and contained in Section 2.1 shall only apply if the **Insured** suffers loss or damage because of the **Insolvency**, death or **Disappearance** of the **Contractor**.
- 3.2 The indemnity contained in Section 2.1 does not extend:
- (a) beyond such declared **Residential Building Work** to the remainder of the **Home** or **Site**;

- (b) to any works carried out or not carried out by any predecessors or **Successors in Title** to the **Contractor**; or
- (c) to any works which are the subject of any other insurance, guarantee or home building indemnity scheme or other similar arrangement approved by any legislation.

3.3 The indemnity contained in Section 2.1 excludes the **Insurer** from liability for the amount of any part of:

- (a) a deposit or payment that exceeds the amount specified for such a deposit or payment in Section 8 of **the Act**; or
- (b) a progress payment that exceeds the amount specified for such a payment under any **Contract** related to the **Work** concerned.

3.4 Except as required by **the Act** or the **Regulations** the **Insurer** shall not be liable or required to indemnify or compensate the **Insured** for any loss or damage arising from:

- (a) a **Claim** that may arise under the **Contract** in the nature of liquidated damages for delay or damages for delay, provided that this exclusion does not extend to any increase in rectification costs caused by the effluxion of time;
- (b) such loss or damage as could be reasonably expected to result from fair wear and tear of the **Work** or failure by the **Insured** to maintain the **Work**;
- (c) a **Claim** in relation to a **Defect** in, or in the repair of damage to, **Structural Elements** in the non-residential part of a building that supports or gives access to the residential part, unless it is a **Defect** or damage that adversely affects the structure of the residential part or the access to it;
- (d) a **Claim** in relation to damage caused by the normal drying out of the **Work** if the damage has occurred despite the **Contractor** taking all reasonable precautions in allowing for the normal drying out when carrying out the **Work**;
- (e) a **Claim** in relation to damage due to or made worse by the failure of the **Insured** to take reasonable and timely action to minimise the damage;
- (f) a **Claim** in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the **Claim** is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus;
- (g) a **Claim** in relation of damage to **Work** or materials that is made outside the reasonable lifetime of the **Work** or materials, or the manufacturers' warranty period for the materials;
- (h) a **Claim** in relation to a **Defect** due to faulty design provided by the **Insured** or a previous owner;
- (i) a **Claim** for compensation made under the indemnity for non-completion of the **Residential Building Work** under Section 2.1 (a), (b) and (d) to the extent that the cost of completion (excluding the cost of rectifying any **Defective Work**) exceeds an amount equal to 20% of the **Contract Price** (including any agreed variation to the **Contract Price**) under the relevant **Contract** for the **Work**.

- (j) a **Claim** in relation to **Defects** or damage due to an act or omission of someone other than the **Contractor** or the **Contractor's** agents, employees or sub-Contractors;
- (k) a **Claim** in relation to **Defects** due to materials which were faulty or unsuitable and which were provided by the **Owner**;
- (l) a **Claim** in relation any **Defect** in the **Work** which was evident or was reasonably evident or was ascertainable by reasonable inspection at or prior to the time of purchase of the **Dwelling** by the **Insured**;
- (m) a **Claim** in relation to damage due to or made worse by the use of the affected part of the **Dwelling** the subject of the **Work** primarily for non-residential purpose;
- (n) a **Claim** made by a **Person** who is a **Successor in Title** of the **Owner** where the claim relates to **Work** and materials in respect of which the **Person's** predecessor in title has made a claim;
- (o) a **Claim** for loss or damage arising from personal injury, death or illness;
- (p) consequential or financial loss of whatsoever nature other than as provided for in this **Policy** and including, without limitation, loss of rent or other income;
- (q) a **Claim** arising from loss or damage to any property of the **Insured** other than the **Dwelling** the subject of the **Work** or to any property owned by a **Person** other than the **Insured**;
- (r) a **Claim** for an amount which is less than the amount of the applicable **Excess** specified in this **Policy**;
- (s) a **Claim** arising from **Residential Building Work**:
 - (i) performed outside the State of New South Wales; or
 - (ii) to which Section 92 of **the Act** does not apply; or
 - (iii) which was not required to be carried out pursuant to the relevant **Contract**.
- (t) a **Claim** made against the **Contractor** or directly against the **Insurer** by:
 - (i) an **Insured** who is a **Developer**; or
 - (ii) who at the time was also the **Contractor**; or
 - (iii) made by any **Person** who was also specified in the Policy Schedule; or
 - (iv) made by any related **Person** who is expressly stated in Section 13 not to be an **Insured** for the purposes of this **Policy**;
- (u) loss or damage which would otherwise be claimable under this **Policy**, if the **Insured** has already been compensated directly or indirectly whatsoever;
- (v) any act committed or condoned by the **Insured** which is dishonest, fraudulent, criminal or malicious;
- (w) any penalties, fines exemplary or punitive damages awarded against either the **Contractor** or the **Insured** or any other sums imposed against either the **Contractor** or the **Insured**;
- (x) any damages other than those referred to in Section 2.2(b), including any other liquidated, general, agreed or other damages or costs howsoever arising;

- (y) failure or malfunction of any mechanical or electrical equipment or appliance if the malfunction is not attributable to the workmanship of or installation by the **Contractor**;
- (z) any liability imposed upon the **Contractor** pursuant to any **Contract** if such liability would not have been imposed upon the **Contractor** in the absence of any such **Contract**;
- (aa) any **Claim** which relates to:
 - (i) war; or
 - (ii) a nuclear event; or
 - (iii) civil unrest; or
 - (iv) risks normally insured under a policy for public liability or contract works; or
 - (v) asbestos contamination or removal; or
 - (vi) an act of God or nature.
- (bb) any **Claim** which relates to:
 - (i) any loss or damage howsoever occurring prior to the date of the **Contract**;
 - (ii) any **Claims** or circumstance notified under any other policy, indemnity or guarantee or any other similar arrangement;
 - (iii) a claim or circumstance which might give rise to a claim which was known to the **Insured** at the inception date of this **Policy**, whether or not the claim or circumstance was stated in the **Application**; and
- (cc) normal shrinkage of materials or foundations, heave or any movement of earth, rust, corrosion, gradual deterioration, depreciation of **Residential Building Work** or normal drying out of materials, vermin or insects or from any process of cleaning involving the use of harsh chemicals and cleaning agents or as a result of the failure by the **Insured** to maintain the appropriate protection against pest infestation or exposure of natural timbers.

SECTION 4 **PERIOD OF INSURANCE**

- 4.1 This **Policy** only provides the indemnities referred to in Section 2 for the following period:
- (a) in respect of loss or damage arising from non-completion of the **Work**, the period of 12 months commencing upon the date of the failure of the **Contractor** to commence the **Work** or the date of the cessation of the **Work**; or
 - (b) in respect of loss arising from a **Structural Defect** for the period of 6 years after the date of **Completion** of the **Work** or the date of the end of the **Contract** relating to the **Work**, whichever is the later; or
 - (c) in respect of loss arising otherwise than from any such **Structural Defect** 2 years after the date of the **Completion** of the **Work** or the date of the end of the **Contract** relating to the **Work**, whichever is the later.

SECTION 5 **AMOUNT OF COVER**

- 5.1 The aggregate liability of the **Insurer** under this **Policy** in relation to each **Dwelling** to which this **Policy** relates will not exceed the greater of the maximum amount of

cover as specified in the Policy Schedule and the amount provided for from time to time by **the Act** and the **Regulations** as the maximum amount of cover payable for the purposes of **the Act**.

- 5.2 The maximum amount of cover otherwise payable under this **Policy** in respect of a **Dwelling** in a building or complex containing more than one **Dwelling**, is reduced by not more than an amount calculated by dividing the amount of any claim paid by the **Insurer** in relation to common property of the building or complex by the number of **Dwellings** contained in the building or complex.

SECTION 6 **EXCESS**

- 6.1 In each **Claim** made under this **Policy** the **Insurer** is not liable for the amount specified in the Certificate of Insurance as the **Excess** and may deduct that amount from any amount payable by the **Insurer** to the **Insured** under this **Policy** if the amount of the **Excess** has not been paid by the **Insured** to the **Insurer**.

SECTION 7 **NOTIFICATION OF DEFECTS AND LEGAL PROCEEDINGS**

- 7.1 The **Insured** is required to give the **Insurer** or the **Insurer's** agent immediate notice in writing of:
- (a) any **Defect** upon any **Defect** becoming evident or reasonably evident to the **Insured** subsequent to the **Completion** of the **Residential Building Work**; and
 - (b) any circumstance which may give rise to a claim, upon the **Insured** becoming aware of that circumstance.
- 7.2 If the **Insured** should either commence any legal proceedings or take any other action against the **Contractor**, either to seek to recover any compensation or to rectify any loss or damage, which may reasonably be covered under this **Policy** upon the **Contractor's Insolvency**, death or **Disappearance**, then the **Insured** shall upon commencing any legal proceeding or taking any other action, immediately notify the **Insurer** or the **Insurer's** agent in writing and provide full details and particulars of the matters in dispute and of the **Insured's** claim against the **Contractor**.

SECTION 8 **NOTIFICATION OF A CLAIM AND CLAIMS PROCEDURE**

- 8.1 The **Insured** is required to give the **Insurer** or the **Insurer's** agent immediate notice on the **Insurer's Claim Form** of any **Insured Event** occurring due to the **Insolvency**, death or **Disappearance** of the **Contractor**.
- 8.2 For a notice to be considered valid notice for the purpose of Section 8.1 of this **Policy** the written notice must:
- (a) be on the **Insurer's** approved **Claim Form** and must set out the particulars of each contractual failure by the **Contractor**, **Defect** or point of claim and the date or dates on which the contractual failures, **Defects** or loss and damage occurred or first became apparent; and
 - (b) have attached to it all documents in the **Insured's** possession, which documents are relevant to the **Insurer's** determination of the **Claim**, including a complete signed and dated copy of the relevant **Contract**.
- 8.3 The **Insurer** will not be liable to pay a **Claim**, or may reduce its liability under a **Claim** made under the **Policy** in respect of any loss or damage which is due to or made worse by the failure of the **Insured**:

- (a) to take reasonable precautions and/or timely action to avoid or minimise loss or damage covered by the **Policy**; and
 - (b) to notify the **Insurer** or the **Insurer's** agent immediately upon the **Defect** being noticed or becoming reasonably apparent.
- 8.4 If the **Insured** in a **Claim** to the **Insurer** or the **Insurer's** agent gives notice of a **Defect**, the **Insured** is to be taken, for the purposes of the **Policy** to have given notice of every **Defect** of which the **Defect** notified is directly or indirectly related, whether or not the **Claim** in respect of the **Defect** that was actually notified has been settled.
- 8.5 The **Insured** shall make all reasonable efforts to inform the **Insurer** or the **Insurer's** agents and assist the **Insurer** and its agents in relation to a **Claim**.
- 8.6 The **Insurer** may not reduce its liability under this **Policy** or reduce any amount otherwise payable in respect of a **Claim** merely because of a delay in a **Claim** being notified to the **Insurer** if a **Claim** is notified within the period set out below:
- (a) except as referred to in Section 8.6(b), not later than 6 months after the **Insured** first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the **Claim** arises; or
 - (b) in the case of a fact or circumstance that may give rise to a **Claim** for loss or damage resulting from incomplete work, not later than 12 months after:
 - (i) the Contract date; or
 - (ii) the date provided in the **Contract** for the commencement of the **Work**; or
 - (iii) the date **Work** ceased;whichever is the later.
- 8.7 The period for making claims under the **Policy** ceases immediately the **Period of Insurance** expires.
- 8.8 The **Insurer** may at its option fulfil its obligations either in whole or in part as the case may be under this **Policy**, by arranging for another contractor to satisfactorily complete or rectify any **Defective** or incomplete **Residential Building Work** at the **Site** to the standard and specifications outlined in the relevant **Contract**.
- 8.9 If at the time of an **Insured Event** there is a **Balance of Monies** in the **Contract Price** under the relevant **Contract**, the **Balance of Monies** must first be exhausted by the **Insured** and first applied to the following:
- (a) toward rectification costs of any **Defective Work** as a result of any event referred to in Section 2.1; and
 - (b) then toward the costs of any loss or damage incurred of a nature which is referred to in Section 2.2; and
 - (c) then toward any other costs associated with loss or damage indemnified under this **Policy** as a result of any event referred to in Section 2.1.
- 8.10 The **Insured** agrees that for the purposes of any **Claim** made to the **Insurer** any **Balance of Monies** shall be deemed to have been applied in the manner referred to in Section 8.9 for the purposes of assessment of the **Insured's Claim** by the **Insurer**.

SECTION 9 **DUTY OF INSURED MAKING A CLAIM**

- 9.1 The **Insured** is required upon making a **Claim** under the **Policy**:
- (a) to comply with the reasonable directions of the **Insurer** or the **Insurer's** agents in relation to the completion or rectification of the **Residential Building Work**;
 - (b) not to undertake or cause to be undertaken any rectification works without notifying the **Insurer** or the **Insurer's** agent, unless such works are reasonably necessary to prevent or minimise any further loss or damage;
 - (c) to provide reasonable access to the **Site** for the purpose of inspection, rectification and completion of any **Residential Building Work**; and
 - (d) for the purposes of item (c) above, to permit the **Contractor** under the relevant **Contract** or another contractor nominated or approved by the **Insurer** or the **Insurer's** agents to have access to the **Site**, subject to the **Insured's** right on reasonable grounds (including loss of confidence in the **Contractor** under the relevant **Contract**) to refuse access to the **Contractor** under the relevant **Contract** or to a contractor nominated or approved by the **Insurer**.
- 9.2 Despite Section 9.1 the **Insurer** may not reduce its liability to the **Insured** by reason of a failure on the part of the **Insured** to comply with a requirement under Section 9.1 unless and only to the extent that the **Insurer** can prove that the failure increased the liability of the **Insurer** under the **Policy**.
- 9.3 The **Insured** shall subrogate the **Insured's** rights to the **Insurer** to the extent that it will permit the **Insurer** to recover monies paid in respect of any **Claims** made against the **Policy**.

SECTION 10 **DUTY OF INSURER**

- 10.1 The **Insurer** is not entitled either to refuse to pay a **Claim** under this **Policy** or to cancel this **Policy** on the grounds that this **Policy** was obtained by misrepresentation or non-disclosure by the **Contractor** or that the policy premium was not paid, providing in the latter case, that a certificate evidencing insurance has been given or the **Insurer** has otherwise accepted cover.

SECTION 11 **RIGHT OF INSURER TO RECOVER AGAINST THE CONTRACTOR AND INSURED**

- 11.1 The **Insurer** is entitled to recover from the **Contractor** and the **Contractor** will reimburse to the **Insurer** the amount of all payments made and all costs incurred by the **Insurer**, including all legal costs and expenses on an indemnity basis, in respect of a valid **Claim** under the **Policy**.
- 11.2 The **Insurer** is entitled to recover from the **Insured** and the **Insured** will reimburse to the **Insurer** the amount of all monies paid and all costs incurred by the **Insurer**, including all legal costs and expenses on an indemnity basis, in relation to a **Claim** where the **Insured** received those monies when not so entitled under the **Policy**.
- 11.3 The **Insured** indemnifies and will keep indemnified the **Insurer** in relation to any loss the **Insurer** may suffer (including the making of a payment to the **Insured** under this **Policy**) where that loss is contributed to by any failure of the **Insured** to comply with its obligations under this **Policy**.

SECTION 12 MISCELLANEOUS

- 12.1 This **Policy** is issued in compliance with the requirements of the **Act** and if any term of this **Policy** conflicts or is inconsistent with the **Act** or the **Regulations** then the **Policy** must be read and be enforceable as if it complies with the **Act**.
- 12.2 If any term of this **Policy** is held invalid, unenforceable, illegal or void for any reason whatsoever, then this **Policy** shall remain otherwise in full force and effect apart from that term which will be deemed to be severed from this **Policy**.
- 12.3 If any term of the Policy Schedule/Certificate of Insurance is inconsistent with the terms of the **Contract of Insurance**, the term in the Policy Schedule/Certificate of Insurance shall be taken to be the same and have the same meaning as defined in the **Contract of Insurance**.

SECTION 13 DEFINITIONS AND INTERPRETATION

- 13.1 For the purposes of this **Policy**, the Policy Schedule, Certificate of Insurance and any **Endorsement** to the **Policy**, unless the context otherwise requires:

'**the Act**' means *Home Building Act 1989*.

'**Application**' means the Application (inclusive of all attachments) for Residential Building Insurance completed and signed by or for and on behalf of the **Contractor** named in the Policy Schedule or Certificate of Insurance.

'**Balance of Monies**' means any monies remaining or left over in the **Contract Price** after taking into account the **Contract Price** amount under the relevant **Contract** less payments made by the **Insured** to the **Contractor** in accordance with **the Act** and the relevant **Contract**.

'**Claim**' for the purposes of the **Policy**, means written notice made on the **Insurer's Claim Form** of any failure of the **Contractor** to comply with the terms of the **Relevant Contract** or any **Defect**.

'**Claim Form**' means the claim form approved by the **Insurer** to be submitted by the **Insured** to the **Insurer** for the purposes of a **Claim** under the **Policy**.

'**Completion**' of the **Work** means:

- (a) the date on which the **Work** is completed within the meaning of the relevant **Contract**; or
- (b) if the relevant **Contract** does not provide for when the **Work** is completed or there is no contract, on the date of the final inspection of the **Work** by the applicable council; or
- (c) in any other case, on the latest date that the **Contractor** attends the **Site** to complete the **Work** or hand over possession to the **Owner**, or if the **Contractor** does not do so, on the latest date the **Contractor** attended the **Site** to carry out the **Work**.

'**Contract**' means the Contract or Contracts specified in the Certificate of Insurance to do the **Work** and entered into between the **Owner** and the **Contractor** in which the **Contract Price** for the carrying out of the **Work** is more than \$12,000.

'**Contract of Insurance**' means **Policy**.

'**Contractor**' means the person named in the Certificate of Insurance who enters into a **Contract** with the **Owner** to do the **Work** and who is a person required by **the Act** not to enter into a contract to do the **Work** unless an insurance contract required by **the Act** is in force in relation to the **Work**.

'**Contract Price**' has the same meaning as in **the Act** and the **Regulations**.

'**Contractor Licence**' means a contractor licence in force under **the Act**.

'**Defective**' and '**Defects**' in relation to **Residential Building Work** means:

- (a) a breach of any **Statutory Warranty** by the **Contractor**; and
- (b) **Work** requiring rectification as a result of the event stated at Section 2.1 (c).

'**Developer**' means the individual, partnership or corporation (other than a company that owns a building under a company title scheme) on whose behalf the **Work** is done either:

- (a) in connection with an existing or proposed **Dwelling** in a building or residential development where four or more of the existing or proposed **Dwellings** are or will be owned by the individual, partnership or corporation; or
- (b) the **Work** is done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation.

'**Disappearance**' means after due search and inquiry cannot be found.

'**Dwelling**' has the same meaning as in **the Act** and the **Regulations**.

'**Endorsement**' means a special term or condition which varies the cover granted by the **Policy** which is noted on the Policy Schedule or Certificate of Insurance.

'**Excess**' means any applicable amount under Section 6 of this **Policy** being an amount which the **Insurer** is not liable to pay to settle a valid **Claim**. For the purposes of a **Claim** and the **Policy**, the **Excess** is an amount or contribution which the **Insured** must bear in respect of each **Claim**.

'**Insolvency**' means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Act*); or
- (b) in relation to a corporation, that the corporation is an externally administered body corporate (within the meaning of the *Corporations Act*);

'Insured' means a **Person**:

- (a) on whose behalf **Residential Building Work** covered by the **Contract** is done or is to be done; or
- (b) a **Successor in Title** to any **Person** referred to in (a) above,

but expressly excludes:

- (i) a **Developer** who does **Residential Building Work**;
- (ii) a **Person** who does **Residential Building Work** other than under a contract; and
- (iii) a holder of a **Contractor Licence** who or which carried out the **Residential Building Work**; and
- (iv) companies related within the meaning of Section 50 of the *Corporations Act*, to any corporate person referred to in subparagraph (i), (ii) or (iii).

'Insured Event' means any event referred to in Section 2.1 of this **Policy** which occurs during the **Period of Insurance**.

'Insured Loss' means loss or damage incurred during the **Period of Insurance** resulting from an **Insured Event** after any **Balance of Monies** referred to in Section 8.9 has been applied in accordance with that Section.

'Insurer' means Lumley General Insurance Limited ABN 20 002 543 606.

'Owner' means the person named in the Certificate of Insurance for whom the **Work** is to be done.

'Period of Insurance' means the applicable period referred to in Section 4.1 of this **Policy**.

'Person' includes a body corporate as well as an individual.

'Policy' means this policy of insurance.

'Policy Limitations' means any limitation, term, condition or exclusion stated in this **Policy**, the Policy Schedule or Certificate of Insurance or implied at law.

'Reasonable Costs' means:

- (a) **Reasonable Legal Costs**; and
- (b) reasonable costs and expenses,

actually incurred by the **Insured** in the proper and reasonable attempt to seek to recover compensation from the **Contractor** or in taking action to rectify any loss or damage.

'Reasonable Legal Costs' means costs calculated on a party/party basis in accordance with the appropriate scale having regard to the quantum of the **Insured's** loss or damage covered by the **Policy**.

'**Registered Proprietor**' means in relation to a **Dwelling**, the owner of the **Site** in which the building is erected.

'**Regulation**' means the *Home Building Regulation 1997*.

'**Residential Building Work**' has the same meaning as in **the Act** and the **Regulations**.

'**Site**' means the land specified in the Certificate of Insurance on which the **Work** is carried out or to be carried out by the **Contractor** under the relevant **Contract**.

'**Statutory Warranty**' means each of the warranties given by the **Contractor** to the **Owner** as implied under Section 18B of **the Act** being:

- (a) a warranty that the **Work** will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the **Contract**;
- (b) a warranty that all materials supplied by the **Contractor** will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the **Contract**, those materials will be new;
- (c) a warranty that the **Work** will be done in accordance with, and will comply with **the Act** or any other law;
- (d) a warranty that the **Work** will be done with due diligence and within the time stipulated in the **Contract**, or if no time is stipulated, within a reasonable time;
- (e) a warranty that, if the **Work** consists of the construction of a **Dwelling**, the making of alterations or additions to a **Dwelling** or the repairing, renovation, decoration or protective treatment of a **Dwelling**, the **Work** will result, to the extent of the **Work** conducted, in a **Dwelling** that is reasonably fit for occupation as a **Dwelling**;
- (f) a warranty that the **Work** (and any materials used in doing the **Work**) will be reasonably fit for the specified purpose or result, if the **Person** for whom the **Work** is done expressly makes known to the **Contractor** or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the **Contractor**, the particular purpose for which the **Work** is required or the result that the **Owner** desires the **Work** to achieve, so as to show that the **Owner** relies on the **Contractor's** skill and judgement.

'**Structural Defect**' in relation to a building means any **Defect** in a **Structural Element** of the building that is attributable to defective design, **Defective** or faulty workmanship or **Defective** materials (or any combination of these) and that:

- (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used; or
- (b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building; or
- (c) results in, or is likely to result in:
 - (i) the destruction of the building or any part of the building; or

- (ii) physical damage to the building or any part of the building; or
- (d) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.

'Structural Element' in relation to a building, means:

- (a) any internal or external load-bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roofs, columns and beams; and
- (b) any component (including weatherproofing) that forms part of the external walls or roof of the building.

'Successor in title' means a subsequent **Registered Proprietor**.

'Work' means the **Residential Building Work** to be carried out by the **Contractor** for the **Owner** as described in the **Contract**, or where there is no contract entered into between the **Contractor** and the **Owner** in respect of the **Work** in circumstances where under **the Act** a contract in writing for that **Work** is not required, the actual **Work** performed by the **Contractor** for the **Owner** on **the Site**.

- 13.2 Words importing the singular number include the plural number, words importing any gender include each other gender.
- 13.3 Headings are for ease of reference only and do not affect the meaning of any provision of this **Policy**.
- 13.4 A reference in this **Policy** to any Section as set out in this **Policy** or to the Policy Schedule is a reference to the provisions of the relevant Section in this **Policy** or of the Schedule to this **Policy**.



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