

Home Warranty Insurance Domestic Building Work Licensed Builder (VIC)



SECTION 1 - INTRODUCTION

This Home Warranty 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 Order and if any term of the policy conflicts or is inconsistent with the Order then the policy must be read and be enforceable as if it complies with the Order.

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 4.3.

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) breached any duty of utmost good faith;
- (ii) failed to comply with any duty of disclosure;

- (iii) made misrepresentations to Us;
- (iv) failed to comply with a provision or a requirement of the policy;
- (v) by act or omission of any description, prejudiced Our interest, or
- (vi) failed to pay the premium or any instalment of the premium.

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 will notify the Building Practitioners Board at the times and in the manner agreed with the Building Practitioners Board:

- (a) if We refuse the Builder cover for Domestic Building Works at the Building Site;
- (b) if the Builder ceases to become eligible to renew or purchase insurance cover;
- (c) if in respect of Domestic Building Work performed prior to the commencement of the Order, the Builder fails to purchase or maintain required insurance cover; or
- (d) 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 Order. At Your or the Builders 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 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 the Tribunal. 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 DBC Act, the Act and the Order. Should it be found by the Tribunal or any court that any provision or term of this policy, is invalid or not in accordance with the DBC Act, the Act or the Order or that the Order 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.

2.8 Limitation or Exclusion of Rights Against Third Parties

You must not limit or exclude your rights against a party from whom you might otherwise be able to recover in respect of loss or damage. If you do, Our liability to You is reduced to the

extent that We can no longer recover from that other party as a result of the limitation or exclusion by You.

SECTION 3 - DEFINITIONS

For the purposes of this policy, the following words have special meanings. Where also appearing in the Order made under the Act, they are consistent with the Order. If there is any discrepancy, the definition contained in the Order 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 1993* (Vic).

Builder means:

A person who or a partnership which carries out or intends to carry out or manages, arranges or intends to manage or arrange Domestic Building Work.

Building Owner means:

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

Building Practitioners Board means:

The Building Practitioners Board established under the Act.

Building Site means:

The place where Domestic 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 an Implied Warranty or failure by the Builder to comply with the requirements of the Insurable Domestic Building Contract.

Commencement Day means:

The earlier of:

- (a) the date the relevant Domestic Building Contract was entered into; or

- (b) the date of issue of the building permit for the relevant Domestic Building Work.

Common Property means:

Property in a strata, cluster or other subdivision that vests in You and other owners as tenants in common in shares proportional to Your lot entitlement as defined in the *Subdivision Act 1988* (Vic) and the *Transfer of Land Act 1958* (Vic).

Completion Date means:

- (a) the date of issue of the occupancy permit for the Home (whether or not subsequently cancelled or verified); or
- (b) if an occupancy permit is not issued, the date of issue under Part 4 of the Act of the certificate of final inspection of the domestic building work for the Construction of the Home; or
- (c) if neither an occupancy permit or final certificate of inspection is issued or required to be issued, the date of Practical Completion of the Domestic Building Work.

Construct 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.

DBC Act means:

The *Domestic Building Contracts Act 1995*.

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 Domestic Building Work:

- (a) a breach of any Implied Warranty listed in Section 8 of the DBC Act; or
- (b) a failure to maintain a standard or quality of Domestic Building Work specified in the relevant Domestic Building Contract.

Developer means:

Any person for whom 3 or more Homes are being or proposed to be Constructed:

- (a) on any one Building Site; or
- (b) on more than one Building Site under one Domestic Building Contract,

other than a Home that is or is to be Your principal place of residence.

Disappears means:

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

Domestic Building Contract means:

The same as it does in the DBC Act.

Domestic Building Work means:

Any building work referred to in Section 5 of the DBC Act that is not excluded from the operation of the DBC Act by Section 6 of the DBC Act.

Home means:

Any residential premises and includes any part of an industrial or commercial premises that is used as a residential premises but does not include:

- (a) caravan within the meaning of the *Residential Tenancies Act 1997 (Vic)* or any vehicle used as a residence; or
- (b) any residence that is not intended for permanent habitation; or
- (c) or rooming house within the meaning of the *Residential Tenancies Act 1997 (Vic)*; or;
- (d) a motel, residential club residential hotel or residential part of licensed premises under the *Liquor Reform Act 1998 (Vic)*; or
- (e) a nursing home, hospital or accommodation associated with a hospital; or
- (f) any residence that regulations under the DBC Act state is not a Home for the purposes of the definition of "Home" in that Act.

Implied Warranty means:

The same as it does in Section 8 of the DBC Act, namely:

- (a) the Builder warrants that the Domestic Building Work is carried out, managed or arranged in a proper and workmanlike manner in accordance with the plans and specifications set out in the Insurable Domestic Building Contract;
- (b) the Builder warrants that all materials supplied by the Builder for use in the Domestic Building Work will be good and suitable for the purpose for which they are used and that unless otherwise stated in the Domestic Building Contract, those materials will be new;
- (c) the Builder warrants that the Domestic Building Work was carried out, managed or arranged in accordance with all laws and legal requirements including, without limiting the generality of this Implied Warranty, the Act and the Regulations made under the Act;
- (d) the Builder warrants that the Domestic Building Work will be carried out with reasonable care and skill and will be completed by the date or period specified in the Domestic Building Contract;
- (e) the Builder warrants that if the Domestic Building Work consists of the erection, Construction, alteration or repair of a Home, the Home will be suitable for occupation at the time the work is completed; and
- (f) if the Domestic Building Contract states the particular purpose for which the Domestic Building Work is required, or the result the Building Owner wishes to achieve, so as to show that the Building Owner relies on the Builder's skill and judgement, the Builder warrants that the Domestic Building Work will be reasonably fit for that purpose or will be of such a nature and quality that they may reasonably be expected to achieve that result.

Insolvent means:

- (a) In the case of a natural person, insolvent under administration as defined in the *Corporations Act 2001 (Cth)*; or

- (b) In the case of a body corporate, subject to external administration as defined in the *Corporations Act 2001* (Cth).

Insurable Domestic Building Contract means:

A Domestic Building Contract in which the contract price for the Domestic Building Work exceeds \$12,000.

Multi-Storey Residential Building means:

A building that:

- (a) has a rise in Storeys of more than 3; and
- (b) that contains 2 or more separate dwellings.

Non-Structural Defect means:

In relation to a building, a Defect in the Domestic Building Work other than a Structural Defect.

Order means:

The Domestic Building Insurance Ministerial Order made under the Act and published in the Government Gazette No. S98 May 2003.

Practical Completion Date means:

In relation to Domestic Building Work, the date when the Domestic Building Work is completed except for any omissions or Defects that do not prevent the Domestic Building Work from being reasonably capable of being used for its intended purpose.

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.

Storey means:

The same as it does in the *Building Regulations 1994* (Vic), but does not include a space within a building if the BHWPDLSLV547 0307

space contains only accommodation intended for vehicles.

Structural Defect means:

In relation to a Home, any Defect of a Structural Element of the Home 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 Home or any part of the building, being required by law to be closed or prohibited from being used; or
- (b) prevents or is likely to prevent, the continued practical use of the Home or any part of the Home; or
- (c) results in or is likely to result in:
 - (i) the destruction of the Home or any part of the Home; or
 - (ii) physical damage to the Home or any part of the Home; or
- (d) results in or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of or physical damage to the Home or any part of the Home.

Structural Element means:

In relation to a Home,

- (a) any internal or external load-bearing component of the Home that is essential to the stability of the Home or any part of the Home including (but not limited to), foundations, floors, walls, roofs, columns and beams; or
- (b) Any component, including weatherproofing, that forms part of the external walls or roof of the Home.

Trade Practices Provision means:

Sections 52, 53, 55A, or 74 of the *Trade Practices Act 1974* (Cth) or Sections 9, 11 and 12 of the *Fair Trading Act 1999* (Vic).

Tribunal means:

The Victorian Civil and Administrative Tribunal established by the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

Variation means:

A document altering the price or scope of Domestic Building Work signed by and

agreed between the Building Owner and the Builder under an Insurable Domestic 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 Implied Warranties; or
- (d) any person who is the owner for the time being of the Home or land in respect of which the Domestic Building Work is or was being carried out, managed or arranged;

but does not mean:

- (i) the Builder;
- (ii) a Developer who does Domestic 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 Domestic Building Work referred to in the Insurable Domestic Building Contract; or
- (b) from Defective Domestic Building Work performed by the

Builder under the Insurable Domestic Building Contract; or

- (c) resulting from a breach by the Builder of any of the Implied Warranties; or
- (d) resulting from the failure of the Builder to maintain a standard or quality of Domestic Building Work specified in the relevant Insurable Domestic Building Contract; or
- (e) resulting from the conduct of the Builder in connection with the Insurable Domestic Building Contract which contravenes any Trade Practices Provision; or
- (f) related to the costs of alternative accommodation and removal and storage costs that are reasonably and necessarily incurred as a result of an event arising from Section 4.1 (a) to (e) inclusive of the policy; or
- (g) from the loss of a deposit (or part of a deposit) or loss of any progress payment under the Insurable Domestic Building Contract where the Domestic Building Work has not commenced.

4.2 Breadth of Indemnity

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

4.3 Limit of Indemnity

- (a) We will not be liable to pay You any more than \$200,000 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.

- (b) If the Claim relates to the indemnity under clause 4.1(a) We will not be liable to pay You more than 20% of the contract price of the Insurable Domestic Building Contract.

4.4 Period of Insurance

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

- (a) Non-Structural Defects 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 Domestic Building Work, or
 - (ii) the date of termination of the Insurable Domestic Building Contract.
- (b) Structural Defects 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 Insurable Domestic Building Work, or
 - (ii) the date of termination of the Insurable Domestic 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 Domestic Building Works have been performed by the Builder under the Insurable Domestic Building Contract; and
- (b) the Insurable Domestic Building Contract has been terminated, abandoned or ended by mutual agreement; and
- (c) no Domestic Building Works will be performed by the Builder under the Insurable Domestic 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 4.3(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 Domestic Building Work performed to the remainder of the Home 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 Domestic Building Works which are the subject of any other insurance, guarantee or indemnity issued under the Act, the House Contracts Guarantee Act or similar legislation; or
 - (iv) Domestic Building Work which was not required to be carried out, managed or arranged under the relevant Insurable Domestic Building Contract.
- (b) Non-completion of Domestic Building Work where the Builder's Death, Insolvency or Disappearance occurred before the Builder commenced any Domestic 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 Insurable Domestic Building Contract; and
 - (ii) all Reasonable Legal Costs and Expenses incurred by the

- Building Owner in relation to the relevant Insurable Domestic Building Contract.
- (c) Money paid to the Builder:
 - (i) that exceeds the amounts that should have been paid to the Builder in accordance with Sections 11 or 40 of the DBC Act; and/or
 - (ii) that exceeds the amount that should have been paid to the Builder in accordance with the relevant Insurable Domestic Building Contract.
 - (d) Related to non-completion of the Domestic Building Work where You are a Developer.
 - (e) Normal wear and tear of Domestic 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.
 - (f) Your failure to maintain the Domestic Building Work or maintain the appropriate protection against pest infestation or exposure of natural timbers.
 - (g) Defects relating to landscaping, paving, retaining structures, driveways or fencing works unless those works:
 - (i) are integral to the Construction of a Home, or
 - (ii) require the issue of a building permit under the Act, or
 - (iii) could result in water penetration of or within a Home, or
 - (iv) could adversely affect health or safety, or
 - (v) adversely affect the Structural Element of a Home, or
 - (vi) are not completed and the Builder is Dead, has become Insolvent or Disappeared.
 - (h) 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 Home by You or if You or a previous Building Owner of the Home has already been compensated for that loss or damage.
 - (i) Any act committed or condoned by You relating to the Claim or the Domestic Building Works which is dishonest, fraudulent, criminal or malicious.
 - (j) 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.
 - (k) Any exemplary or punitive damages awarded by the Tribunal or a Court against either the Builder or You.
 - (l) Consequential loss, not otherwise covered under this policy.
 - (m) Bodily injury, death or illness.
 - (n) 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.
 - (o) Work or materials made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials.
 - (p) Liability imposed upon the Builder if that liability would not have been imposed upon the Builder in the absence of a Domestic Building Contract
 - (q)
 - (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.

- (r) 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.
- (s) Risks that are normally insured under a policy for public liability or contract works.
- (t) 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.
- (u) The cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.
- (v) Events that gave rise to a Claim that:
 - (i) occurred prior to the Commencement Day; or
 - (ii) which might give rise to a Claim and which were known to You prior to the Commencement Day.
- (w) Domestic Building Work performed under any Domestic Building Contract related to the Construction of a Multi-Storey Residential Building.
- (x) (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*, 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.

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 Domestic Building Works, We may elect to settle Your Claim in full by way of a single payment of an amount that does not exceed 20% of the contract price under the Insurable Domestic Building Contract including any Variations.
- (b) For any loss or damage You have suffered with regard to an event referred to in Sections 4.1 (b) to (g) inclusive of this policy, You must pay:
 - (i) the first \$1,000 of each Claim made 5 years or more after the Completion Date; or
 - (ii) the first \$750 of each Claim made between 3 and 5 years after the Completion Date; or
 - (iii) the first \$500 of each Claim made between 1 and 3 years after the Completion Date; or
 - (iv) a Claim of \$500 or less for each Claim made between 3 and 12 months after the Completion Date.

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 do not have to pay the first part of any Claim for loss or damage that arises between
 - (i) the date of the Insurable Domestic Building Contract or the date of issue of the building permit for the relevant Domestic Building Work whichever is the earlier; and
 - (ii) the date that is 3 months after the Completion Date, or
 - (iii) if the loss or damage relates to the non-completion of Domestic Building Work.
- (d) 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.
- (e) In the event the Domestic Building Work is carried out, managed or arranged on land in a plan of subdivision 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 Homes 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 Home identified in the policy and that registered proprietor's lot entitlement within the land in the plan of subdivision. No cover is provided to the body corporate, strata scheme or Common Property manager.

- (f) In the event of a Claim made on land in a plan of subdivision 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.

- (g) If a Claim is made regarding a breach of a Trade Practices Provision, We will only be liable to pay for the cost of rectification of any Defective Domestic Building Works.
- (h) In relation to the cover provided by Section 4.1(f), We will only pay for alternative accommodation and storage costs incurred for a period not exceeding 60 days from the date of the loss or damage provided:
 - (i) those costs are incurred only by the registered Building Owner of the Building Site; and
 - (ii) the registered Building Owner is a natural person or if the Home is tenanted, the tenant is a natural person.
- (i) 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 180 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) Despite the requirements of clauses 7.1(b) and (c) of this policy, We acknowledge that Section 54 of the Insurance Contracts Act 1984 (We may not refuse to pay Claims in certain circumstances) applies to this policy.

However if We have been advised in writing within 180 days after You first became aware, or might reasonably expected to have become aware, of the Death, Disappearance or Insolvency of the Builder, then We will not rely on Section 54 of the Insurance Contracts Act 1984 to reduce Our liability under this policy or to reduce any amount otherwise payable in respect of a Claim made only by reason of any delay in the Claim being notified to Us.

- (e) 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 Domestic 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 the Tribunal or 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 Tribunal or 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 Insurable Domestic Building Contract, those monies must firstly be applied:
- (i) toward rectification costs of any Defective and/or incomplete Domestic 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

- (a) If We have not provided You with a written determination of a Claim that has been submitted to Us within 90 days from the receipt of that Claim, and We have not obtained an extension of time from You or the Tribunal, We will accept liability for that Claim subject to the terms, conditions and exclusions provided by the policy.
- (b) 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.



176 Wellington Parade
East Melbourne VIC 3002
P: 1300 300 115 F: 1300 308 115
austhomewarranty.com.au

A division of Oamps Insurance Brokers Ltd
ABN 340 05 543 920 AFS Licence No. 238317