

INSURANCE POLICY CONDITIONS

EDITION 6
EFFECTIVE 1 SEPTEMBER 2003



PEACE OF MIND FOR QUEENSLANDERS

Dear Homeowner,

These documents are your *Home Warranty Insurance Policy* and *Insurance Certificate*.

BSA Home Warranty Insurance is provided by BSA because you have chosen a *BSA Licensed Builder* to construct your home.

This booklet explains the terms and conditions of the Home Warranty Insurance BSA provides for your property - and the certificate shows details of the policy, your builder, the value of the contract and your policy's expiry date.

PLEASE DO NOT THROW THESE DOCUMENTS AWAY.

You should read this booklet carefully and then store it in a safe place. You may need to refer to it if you encounter difficulties with your construction and wish to make a claim.

If you have any questions regarding the contents of this booklet or the details on your certificate please contact your nearest BSA office. A full list of offices and contact details can be found on the back cover of this booklet.



P E A C E O F M I N D

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INSURANCE POLICY CONDITIONS

Subject to the terms of this policy, the Queensland Building Services Authority (“BSA”) will pay for loss for:

- ❑ Non-completion;
- ❑ Defective construction; and
- ❑ Subsidence or settlement

of the insured work referred to in the *certificate of insurance*.

These policy conditions apply to *residential construction work* covered by the *Statutory Insurance Scheme* for which a premium has been paid, a *contract* entered, or work commenced (whichever is the earliest) on or after 1 September 2003.

Note: In this policy, certain words and phrases used throughout are defined in Part 9 and are shown in italics when used, e.g., *Insured*.

Subject to the terms of this policy, BSA’s maximum liability to pay is, for each residence or *residential unit*, an amount calculated by BSA as the *replacement value* of the *residential construction work* insured or \$200,000 (whichever is the lesser), INCLUDING a sum to a maximum of \$5,000 for alternative accommodation, removal and storage costs.



PART 1: NON-COMPLETION

1.1 Payment for Non-Completion

Subject to the terms of this policy, *BSA* agrees to pay for loss suffered by the *Insured* in the event of the *contractor* failing to complete the *contract* for the *residential construction work*.

1.2 Termination of Contract

- (a) *BSA* is only liable to pay for loss under this Part when the *contract* is for a *fixed price* and the *Insured* has properly terminated the *contract* with the *contractor*.
- (b) In this policy, “properly” means lawfully under the *contract* or otherwise at law, upon the *contractor’s* default which extends to, but is not limited to:
 - (i) the cancellation or suspension of the *contractor’s* licence; or
 - (ii) the death or legal incapacity of the *contractor* ; or
 - (iii) the insolvency of the *contractor*.

1.3 Amount of Payment Where Work has not Commenced

Subject to Parts 4, 5 and 6 of this policy, where the *contractor* has not commenced the *contracted works*, the amount of the payment is limited to the total of:

- (a) the lower of:
 - (i) the amount of any unrefunded deposit paid by or on behalf of the *Insured* to or on behalf of the *contractor*;

- (ii) if the *contract* price is equal to or more than \$20,000 – 5% of the *contract* price; or
 - (iii) if the *contract* price is less than \$20,000 – 10% of the *contract* price; and
- (b) interest on the amount payable under paragraph (a) at the rate stated in the *certificate* for the period from when the deposit was paid until the date when the *contract* was terminated.

1.4 Amount of Payment Where Works have Commenced

Subject to Parts 4, 5 and 6 of this policy, where the *contractor* has commenced the *contracted* works, the amount of the payment is limited to the total of:

- (a) *BSA's* assessment of the reasonable cost of completing the *contract* less the *owner's* remaining liability under the *contract* (exclusive of any amount by way of liquidated damages or damages for delay) at the date of termination of the *contract*; and
- (b) in the case of a *contract* for residential construction work other than a *contract* involving building work to a *related roofed building*, an amount *BSA* thinks reasonable for alternative accommodation of the *Insured*, removal and storage costs, necessarily incurred by the *Insured* as a result of the non-completion and because the residential construction work is, in the opinion of *BSA*, uninhabitable.

Any such payment will be limited to those reasonable alternative accommodation, removal and storage costs necessarily incurred as a result of the *contractor's* failure to complete the *contract* for the period from:

- the date nominated or stated in the *contract* for *practical completion*; or



- the date when the *Insured* has properly terminated the *contract* with the *contractor*; or
- the date the *Insured* gives notification of the claim to *BSA*;

whichever date is the latest, until the date that the *residential construction work* referred to in paragraph (b) is substantially complete in the opinion of *BSA*.

For the period between receipt of the formal claim approval from *BSA*, and the making of a *contract* for recommencement of construction, the payment is limited to those expenses incurred over a maximum period of seven days.

1.5 Works Commenced

For the purposes of this Part *contracted works* are commenced when:

- (a) construction of the *footing system* of a building comprising *residential construction work* is commenced; or
- (b) in the case of a *contract* for *residential construction work* where no *footing system* is to be constructed - when change to the existing structure is physically commenced.

1.6 Limit on Right to Payment

- (a) Where in the opinion of *BSA*, the value of the *contracted works* to be undertaken clearly exceeds the price to be paid, *BSA* will reduce the amount payable under this policy by the amount of that excess.
- (b) Where in the opinion of *BSA*, the *Insured* pays to or on behalf of the *contractor* any moneys for the *contracted works* before they become due

("prepayment"), BSA will reduce the amount payable under this policy by the value of that prepayment. (The value of the prepayment is BSA's assessment of the value of the incomplete work in the stage of the contract for which the prepayment was made).

1.7 Expiry of Cover

BSA is only liable to pay for loss under this Part where the *Insured* has properly terminated the contract with the contractor within two years from the date of payment of the insurance premium or the date of entering into the contract (whichever is the earlier).

1.8 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss under this Part unless the claim is made under the policy within three months of the *Insured* properly terminating the contract, or within such further time as BSA may allow.

1.9 No Liability in Certain Circumstances

BSA is not liable under this Part:

- (a) in relation to a contract or contracts for:
 - (i) residential construction work involving more than two single detached dwellings between the *Insured* and the one contractor;
 - (ii) residential construction work involving more than one duplex between the *Insured* and the one contractor;
 - (iii) residential construction work involving more than two residential units within a multiple dwelling between the *Insured* and the one contractor;



- (iv) *residential construction work to the common property of a multiple dwelling other than a duplex between the Insured and the one contractor, unless at least 50% of the units were occupied when the contract was entered into, and when the contract was terminated;*
 - (v) *residential construction work involving the construction of a multiple dwelling other than a duplex.*
- (b) where the *Insured* has exercised the *Insured's* right to withdraw from the *contract* during the "cooling off period" in accordance with the terms of the *contract*, or pursuant to the provisions of the *Domestic Building Contracts Act 2000*.

PART 2: DEFECTIVE CONSTRUCTION

2.1 Payment for Defective Construction

- (a) Subject to the terms of this policy, *BSA* agrees to pay the cost of rectifying defects in the residential construction work that is *primary building work*, other than for defects from subsidence or settlement referred to in Part 3 of this policy.

2.2 Amount of Payment

- (a) Subject to clause 2.2(c) and Parts 4, 5 and 6 of this policy, the amount of the payment under this Part will be limited to the reasonable cost, as determined by *BSA*, of undertaking those works necessary to rectify the defects, less, where the *Insured* contracted with the *contractor* for the undertaking of the *residential construction work* which is defective, the *owner's* remaining liability under the *contract*.

For the purpose of determining the *owner's* remaining liability under the *contract* *BSA* may credit the *owner* with an amount for which the *contractor* has, for valuable consideration, waived

payment and an amount for which the *contractor* is liable to the *owner* in respect of the *contract* for the *contracted works*.

- (b) Where *BSA* has admitted a claim for payment for loss relating to defects, it may if it thinks fit, having given prior written approval, pay the *Insured* for the reasonable alternative accommodation of the *Insured* and any removal and storage costs of the *Insured* necessarily incurred by the *Insured* as a result of the need to rectify the defects and because the *residential construction work* is, in the opinion of *BSA*, uninhabitable.
- (c) Where, in the opinion of *BSA*, the undertaking of remedial works is unnecessary or unreasonable, the payment will be limited to the loss in value, if any, in the *residential construction work*, produced by the departure from the plans or specifications or by the defective workmanship or materials.

2.3 Limits on Right to Payment

BSA's liability to pay under this Part will not arise:

- (a) where, in the opinion of *BSA*, the *Insured* unreasonably refuses access to the *contractor* or his/her agent to undertake rectification; or
- (b) in circumstances where *BSA* issues a direction to rectify defective work, until *BSA* is satisfied that the *contractor* will not comply with that direction or the requirements of the *Tribunal* or a Court in relation to that direction; or
- (c) in circumstances where the *contractor* has a continuing obligation to complete the *residential construction work*.



2.4 Expiry of Cover

- (a) Subject to clause 2.4(c), BSA is only liable to pay for loss under this Part for a *category 1 defect* where the defect first became evident within **six years and six months** after:
- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
 - (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction.
- (b) BSA is only liable to pay for loss under this Part for a *category 2 defect* where the defect first became evident within **six months** after the date of *practical completion* of the *residential construction work*.
- (c) Where the *residential construction work*, (and *residential construction work* comprising more than one separate residence will be considered separately), has not reached *practical completion* within **six months** after:
- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
 - (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction,

the period of insurance cover under this policy in respect of *category 1 defects* will be extended by the amount of time by which the time taken to reach *practical completion* of the *residential construction work* (and *residential construction work* comprising more than one separate residence will be considered separately) exceeds the period of **six months** from that date.

2.5 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss under this Part unless:

- (a) in the case of a *category 1 defect*, the claim is made within **three months** of that defect first becoming evident (in the opinion of *BSA*); or
- (b) in the case of a *category 2 defect*, the claim is made within **seven months** of the date of *practical completion*,

or within such further time as *BSA* may allow.

2.6 No Liability in Certain Circumstances

BSA is not liable under this Part for that part of *residential construction work* that is *associated building work*.

PART 3: SUBSIDENCE OR SETTLEMENT

3.1 Payment for Subsidence or Settlement

- (a) Subject to the terms of this policy, *BSA* agrees to pay for the cost of remedying subsidence or settlement damage to the *residential construction work* that is *primary building work*.
- (b) For the purposes of this policy, “subsidence or settlement” means movement in the foundations of the *residential construction work* which adversely affects the structural adequacy or serviceability, performance or functional use of that work.



3.2 Amount of Payment

Subject to Parts 4, 5 and 6 of this policy, the amount of the payment under this Part will be:

- (a) (i) where the *residential construction work* has been completed and the *Insured* contracted with the *contractor* for the undertaking of the *residential construction work* whose foundations have subsided or settled, the reasonable cost of remedying the *residential construction work* less the *owner's* remaining liability under the *contract*; or
 - (ii) where the *residential construction work* has been completed and the *Insured* purchased the *land* on which the *residential construction work* has been performed, the reasonable cost of remedying the *residential construction work*; or
 - (iii) where the *residential construction work* has not been completed, the reasonable cost of remedying the *residential construction work*; and
- (b) where *BSA* has admitted a claim for payment for loss in relation to subsidence or settlement, it may if it thinks fit, having given prior written approval, pay the *Insured* for the reasonable alternative accommodation of the *Insured* and any removal and storage costs of the *Insured* necessarily incurred by the *Insured* as a result of the need to remedy the subsidence and settlement damage and because the *residential construction work* is, in the opinion of *BSA*, uninhabitable.

3.3 Limits on Right to Payment

BSA's liability for payment under this Part will not arise:

- (a) where, in the opinion of *BSA*, the *Insured* unreasonably refuses access to the *contractor* or his/her agent to undertake rectification; or

- (b) in circumstances where *BSA* issues a direction to rectify defective work, until *BSA* is satisfied that the *contractor* will not comply with that direction or the requirements of the *Tribunal* or a Court in relation to that direction.

3.4 Expiry of Cover

(a) Subject to clause 3.4(b), *BSA* is only liable to pay for loss under this Part where the subsidence or settlement first became evident within **six years and six months** after:

- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
- (ii) where no insurance premium was paid and there was no *contract*, the date of commencement of construction.

(b) Where the *residential construction work*, (and *residential construction work* comprising more than one separate residence will be considered separately), has not reached *practical completion* within **six months** after:

- (i) the date of payment of the insurance premium, or the date of entering into the *contract* (and where more than one date, whichever is the earlier); or
- (ii) where no insurance premium was paid and there was no written *contract*, the date of commencement of construction,

the period of insurance cover under this policy in respect of subsidence or settlement will be extended by the amount of time by which the time taken to reach *practical completion* of the *residential construction work*



(and *residential construction work* comprising more than one separate residence will be considered separately) exceeds the period of **six months** from that date.

3.5 Time Limit for Making a Claim

The *Insured* is NOT ENTITLED to payment for loss under this Part unless the claim is made within **three months** of the subsidence or settlement first becoming evident (in the opinion of *BSA*), or within such further time as *BSA* may allow.

3.6 No Liability in Certain Circumstances

BSA is not liable under this Part for the cost of remedying subsidence or settlement damage for *residential construction work* that is *associated building work*.

PART 4: LIMITS OF LIABILITY

4.1 Limits of Liability

In no case will *BSA* be liable to an *Insured* for an amount in excess of the maximum amount of payment for loss calculated in accordance with this policy.

4.2 Maximum Amount of Payment

(a) Subject to the terms of this policy, the maximum amount of payment for which *BSA* is liable is:

- (i) for each single detached dwelling, *residential unit* or *related roofed building* – an amount calculated by *BSA* as the *replacement value* of the *residential construction work* or \$200,000 (whichever is the lesser), INCLUDING (where applicable) a sum to a maximum of \$5,000 for alternative accommodation, removal and storage costs; or

- (ii) for *common property* under the *Body Corporate and Community Management Act 1997* for any one building being a *multiple dwelling* – the lowest of the following amounts:
- ❑ \$1,000,000;
 - ❑ \$200,000 times the number of *residential units* in the building; or
 - ❑ an amount calculated by *BSA* as the *replacement value* of the *residential construction work* consisting of the *common property*.
- (b) When a *related roofed building* is erected or constructed as part of a *contract* for the performance of other *residential construction work* the maximum amount of payment for which *BSA* is liable is:
- (i) for a single detached dwelling and the *related roofed building* or buildings - \$200,000;
- (ii) for each *residential unit* and the *related roofed building* or buildings - \$200,000; or
- (iii) for *common property* under the *Body Corporate and Community Management Act 1997* for any one building being a *multiple dwelling* including the *related roofed building* or buildings – the lowest of the following amounts:
- ❑ \$1,000,000;
 - ❑ \$200,000 times the number of *residential units* in the building; or
 - ❑ an amount calculated by *BSA* as the *replacement value* of the *residential construction work* consisting of the *common property*.



- (c) The maximum amount of the payment for which *BSA* is liable to an *Insured* for a *contractor* failing to complete the *contract* or *contracts* with the *Insured* is \$200,000 in the aggregate, notwithstanding the *Insured* may be covered under this policy and another policy or policies.

4.3 Taxes

- (a) Any payment made by *BSA* under this policy is inclusive of all relevant taxes on the amounts paid or payable.
- (b) All maximum liability amounts stated in this policy are inclusive of all relevant taxes in respect of those amounts.
- (c) Where the amount of any payment to be made by *BSA* under this policy is to be assessed or calculated by reference to costs expected to be incurred by the *Insured*, those costs are to be determined:
 - (i) after reduction for the amount of any *input tax credits* to which the *Insured* is, or in the opinion of *BSA* could reasonably be expected to be, entitled to claim in respect of those costs; and
 - (ii) exclusive of any *GST* liability for supplies made, or which may be made, by the *Insured*.

In forming its opinion of whether the *Insured* is, or could reasonably be expected to be entitled to claim *input tax credits* in respect of any cost, *BSA* may have regard to whether it is likely that the acquisition for which the cost was incurred, will relate to a *taxable supply*, given:

- the status of the *Insured* as registered for *GST* purposes;
- the nature of the enterprise ordinarily carried out by the *Insured*; and

- the balance of any other evidence available to *BSA* that the *Insured* would be likely to deal with the property in such a way that the acquisition would relate to a *taxable supply*, rather than an *input taxed supply*.
- (d) Where the assessment or calculation of the amount of any payment to be made by *BSA* under this policy involves an adjustment for the remaining liability under a *contract* entered into after 30 June 2000 and where *GST* has been included in that *contract* liability, then the adjustment for that remaining liability may be determined after reduction for the amount of any *input tax credits* to which the *Insured* could, in the opinion of *BSA*, reasonably have been expected to be entitled to claim in respect of that remaining liability.
- (e) In this clause “registered” has the same meaning as in the *GST Act*.

4.4 Additional Limits for Multiple Dwellings

- (a) Where the *residential construction work* involves a *multiple dwelling*, the maximum amount of the payment for loss to the *owner* of a *residential unit* under this policy will be reduced where *BSA* has a liability to pay a claim, or has paid a claim, at the time of loss in relation to any of the *common property* of the *community titles scheme* of which the *residential unit* forms a part.
- (b) The amount of this reduction is calculated in accordance with the following formula:

$$\text{Amount} = F \times G$$

Where:

F is the amount paid or payable in relation to the *common property*;



G is the *Insured's* lot entitlement as a proportion of the sum of the lot entitlements in the *community titles scheme*, or, if there is no *community titles scheme*, then G is the floor area of the *residential unit* as a proportion of the total floor area of the building or buildings (excluding any car park) to which the claim for *common property* relates.

4.5 Additional Limits Where Commercial Works are Involved

(a) Subject to the terms of this policy, where the insured work is contained in a building or buildings ("building") that incorporates both residential purposes and *commercial purposes*, BSA's liability to the *Insured* under Parts 2 or 3 of this policy in relation to *common property* is limited to:

(i) where there is a *community titles scheme*, an amount calculated in accordance with the following formula –

$$\text{liability} = \text{loss} \times \frac{\text{lot entitlement of residential units in building}}{\text{total lot entitlement of building}}$$

or

(ii) if there is no *community titles scheme*, an amount calculated in accordance with the following formula –

$$\text{liability} = \text{loss} \times \frac{\text{floor area of residential units in building}}{\text{total floor area of building (excluding any car park and common property)}}$$

(b) For the purpose of this clause, "loss" is the total cost to rectify defects or remedy subsidence and settlement damage to *common property*.

4.6 Other Insurance

(a) If any loss insured by this policy is covered by any other policy or policies of insurance ("relevant policies"), BSA will pay only the amount in excess of the amount payable under any relevant policies.

- (b) If the *Insured* elects not to claim or pursue payment or indemnity under any relevant policies, *BSA* will only be liable to pay the *Insured* the amount in excess of the amount that would have been payable under any relevant policies.
- (c) The *Insured* shall notify *BSA* in writing of any insurance or insurances already effected covering, whether in whole or in part, the property or liability hereby insured.

4.7 Effect of Release of Contractor or Provision of Indemnity

- (a) Where the *contractor* or other person has been released from any liability in relation to the insured works *BSA* is thereby released from liability under this policy to the same extent.
- (b) Where the *contractor* or other person has been indemnified by the *Insured* in relation to the insured works the *Insured* thereby releases *BSA* from liability under this policy to the extent of that indemnity.

PART 5: GENERAL EXCLUSIONS

5.1 Completion or Rectification Without Approval

BSA may refuse to make a payment for loss under this policy where *residential construction work* has been completed or rectified (as applicable) **without the prior written approval of *BSA*.**

5.2 Subsequent Purchasers

Where the *Insured* purchased the *land* on which *residential construction work* has been performed, the *Insured* is NOT ENTITLED to payment for loss under



Parts 2 or 3 of this policy where such defect or subsidence or settlement was, in the opinion of BSA, evident prior to completing the *contract* to purchase the *land*.

5.3 Alterations and Additions

Where the *residential construction work* involves *primary building work* to an existing residence or *related roofed building* the *Insured* is NOT ENTITLED to payment for loss under this policy for any defects or subsidence or settlement which occurs in relation to that existing residence or *related roofed building* other than those which are directly caused or contributed to by the performance of the *residential construction work*.

5.4 Other Exclusions

The *Insured* is NOT ENTITLED to payment for loss where the loss is caused by or contributed to by:

- (a) the act, omission or inaction of any person other than the *contractor* or the *contractor's* agent, employee, subcontractor, supplier or invitee;
- (b) defective design:
 - (i) in the case of a *multiple dwelling* (and subject to clause 5.5) - where the *Insured* is the person who *contracted* with the *engineer*, *architect* or *design drafter* for the design of the *residential construction work*;
 - (ii) in any other case - unless the design was prepared by or on behalf of the *contractor* or by:
 - ☐ an *engineer*;
 - ☐ an *architect*; or
 - ☐ a *design drafter*;

- (c) the gradual deterioration of the *residential construction* work caused by fair wear and tear or by the lack of maintenance or neglect of the *Insured*;
- (d) the failure of any person other than the *contractor* or the *contractor's* agent, employee, subcontractor, supplier or invitee to undertake reasonable maintenance, inspections and treatments or to carry out reasonable recommendations given by *BSA*;
- (e) pressure waves caused by aircraft or other aerial devices; or
- (f) earthquake, erosion, flood, storm or tempest, landslip, tidal wave, change of water course, failure of artificial devices for the storage or conveyance of water or gas (unless constructed as part of the *residential construction work* by the *contractor*), fire, theft, malicious damage, or accidental damage.

5.5 Insured as the Contractor or an Associate of the Contractor

- (a) Where the *Insured* is:
 - (i) a building *contractor* (other than a subcontractor); or
 - (ii) an associate of a building *contractor*;

and that building *contractor* has performed or caused performance of the *residential construction work* then the *Insured* is not entitled to payment for loss under Part 1 (Non-Completion) or Part 2 (Defective Construction) of this policy in relation to the insured works.

- (b) For the purposes of clause 5.5(a) an *Insured* is taken to be an associate of a building *contractor* if:



- (i) in the case of the building *contractor* being a company – the *Insured* is:
- ❑ an officer of the company;
 - ❑ an individual, other than an officer of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder with a significant shareholding, a financier or a senior employee;
 - ❑ the spouse (including a de facto spouse) or child of an officer of the company or an individual, other than an officer of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder with a significant shareholding, a financier or a senior employee;
 - ❑ a trustee of a trust where the company, or another entity that is an associate of the company because of another sub-paragraph of this clause, benefits or is capable of benefiting under the trust;
 - ❑ another company whose majority voting interest is held by the company; or
 - ❑ another company who holds a majority voting interest in the company;
- (ii) in the case of the building *contractor* being an individual – the *Insured* is:
- ❑ the spouse (including a de facto spouse) or child of the individual;
 - ❑ a trustee of a trust where the individual, or another entity that is an associate of the individual because of another sub-paragraph of this clause, benefits or is capable of benefiting under the trust;

- ❑ a company whose majority voting interest is held by the individual; or
 - ❑ a company in which the individual, the individual's spouse (including a de facto spouse) or child is in a position to control or substantially influence the conduct of the company's affairs, including for example, a shareholder with a significant shareholding, a financier or a senior employee.
- (c) Where the *Insured* is a building contractor (other than a subcontractor), and has performed or caused performance of the *residential construction work*, then the *Insured* is not entitled to payment for loss under Part 3 (Subsidence or Settlement) of this policy unless:
- (i) the *residential construction work* in question is the *contractor's* permanent residence; and
 - (ii) the footing was designed by an *engineer* and that design has been faithfully followed.

5.6 Carpet & Vinyl

The *Insured* is not entitled to payment for loss which relates to repair, replacement or cleaning of carpet or vinyl floor coverings irrespective of whether they are defective, damaged or improperly installed.

5.7 Terrorism

- (a) This policy excludes loss, damage, cost, or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any act of *Terrorism*, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.



- (b) This policy also excludes loss, damage, cost, or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of *Terrorism*.

5.8 Electronic Data

This policy does not insure:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of *electronic data*;
- (b) error in creating, amending, entering, deleting or using *electronic data*; or
- (c) total or partial inability or failure to receive, send, access or use *electronic data*, for any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

PART 6: CLAIMS

6.1 Procedure for Claims

- (a) Prior to making a claim under this policy for defective construction or subsidence or settlement, the *Insured* will (except in the case of insolvency or death of the *contractor*) notify the *contractor* of the facts and circumstances giving rise to the claim and will allow the *contractor* a reasonable opportunity in which to rectify the defects or subsidence or settlement.
- (b) All claims will be in writing and will be in such form and contain such information as *BSA* may direct.

6.2 Admission of Claims

Before admitting a claim, *BSA* will determine whether a direction should be made requiring the *contractor* to rectify the *residential construction work*.

6.3 Duty of Good Faith

- (a) The *Insured* has a duty to *BSA* to act in utmost good faith in respect of any matter arising under or in relation to this policy.
- (b) This duty includes, but is not limited to, a responsibility to disclose to *BSA* every matter the *Insured* knows, or could reasonably be expected to know, which may be relevant to a determination of the liability or the extent of the liability of *BSA* to pay a claim under this policy.
- (c) If the *Insured* fails in the duty of utmost good faith, the *Insured* is liable to pay *BSA* any amount paid in excess of *BSA*'s actual liability to pay for loss under this policy, and *BSA* may recover such sum accordingly.

6.4 Subrogation

BSA is subrogated to the rights of the *Insured* to the extent of any payment it has made or undertaken to make.

PART 7: PAYMENTS

7.1 Payment

Where *BSA* admits a claim under this policy, *BSA* may, at its own discretion, and in full discharge of its liability, do any of the following:



- (a) pay the amount of the claim to a licensed *contractor* engaged by the *Insured* with the approval of *BSA* to rectify or complete the insured works; or
- (b) arrange and pay for the rectification or completion of the insured works by a licensed *contractor* appointed by *BSA* to the extent of the *Insured's* entitlement; or
- (c) pay the amount of the claim to the *Insured*; or
- (d) pay such part of the amount of the claim which is to be used for rectification or completion of the insured works to a licensed *contractor* and any balance to the *Insured*; or
- (e) pay the amount of the claim or any part of it to a body corporate in payment of any contribution or levy owing by the *Insured* under the *Body Corporate and Community Management Act 1997*; or
- (f) pay the amount or part of the amount of a claim made by a body corporate to one or more lot owners in the community management scheme to which the claim relates.

PART 8: REVIEWABLE DECISIONS

8.1 Decisions of BSA Which are Reviewable

Section 101 of the *Commercial and Consumer Tribunal Act 2003* provides that the *Tribunal* may review a reviewable decision for which the *Tribunal* is given jurisdiction under an empowering Act. Section 86 of the *Queensland Building Services Authority Act 1991* provides that the *Tribunal* may review the following decisions of *BSA*:

- ❑ a decision about the scope of works to be undertaken under the *Statutory Insurance Scheme* to rectify or complete tribunal work; or
- ❑ a decision to disallow a claim under the *Statutory Insurance Scheme* wholly or in part; or
- ❑ a decision that a domestic building *contract* has been validly terminated having the consequence of allowing a claim for non-completion under the *Statutory Insurance Scheme*.

8.2 Application for Review

- (a) If the *Insured* is affected by a reviewable decision of *BSA*, the *Insured* may apply to the *Tribunal* for a review of the decision in accordance with section 102 of the *Commercial and Consumer Tribunal Act 2003*.
- (b) An application to review a decision of *BSA* must be made within 28 days after the *Insured* receives written notice of the decision.

PART 9: DEFINITIONS AND INTERPRETATION

9.1 Definitions

In this policy –

“**Act**” means the *Queensland Building Services Authority Act 1991*;

“**architect**” means a person registered as an *architect* under the *Architects Act 1985*;



“associated building work” means associated building work as defined in section 12 of the *Regulation*.

“BSA” means the Queensland Building Services Authority;

“category 1 defect” means a defect which may:

- (a) allow water penetration into a building;
- (b) adversely affect the health and/or safety of the occupants;
- (c) adversely affect the structural adequacy of the building; or
- (d) adversely affect the serviceability, performance or functional use of the building.

“category 2 defect” means a defect which is not a defect of another category and which:

- (a) results from failure of the *contractor* to meet reasonable standards of construction and finish; or
- (b) is of a kind which commonly occurs during the “settling in” period of a new building.

“certificate” means *certificate* of insurance issued under the Act;

“commercial purposes” means purposes other than those related to residential occupancy or other than for the purpose of using a residence for residential purposes;

“common property” means common property as defined by the *Body Corporate and Community Management Act 1997*;

“community titles scheme” means community titles scheme as defined by the *Body Corporate and Community Management Act 1997*;

“contract” means a *contract* for the performance of the *residential construction work* referred to in the *certificate*, or, where there is no *certificate* issued, a *contract* for the performance of *residential construction work* which is afforded the benefits of this policy by virtue of the Act;

“contracted works” means the *residential construction work* to be performed under a *contract*;

“contractor” means:

- (a) the licensed *contractor* referred to in the *certificate*;
or
- (b) where there is no *certificate*, a *contractor* who holds a licence which appears to signify that the *contractor* may enter into contracts with consumers to carry out *residential construction work* covered by the *Statutory Insurance Scheme*, who enters into a *contract* with a consumer to carry out residential construction work or otherwise carries out *residential construction work* other than as a subcontractor; or
- (c) a person fraudulently claiming to hold a licence permitting that person to enter into *contracts* with consumers to carry out *residential construction work* covered by the *Statutory Insurance Scheme*, who enters into a *contract* with a consumer to carry out *residential construction work*;

“cost escalation clause” means a provision of a domestic building *contract* under which the amount to be paid by the consumer may be increased to reflect increased costs of labour and/or materials and/or in consequence of delays in carrying out the work;

“design drafter” means a BSA licensed *design drafter* operating within the scope of work permitted under the licence;



“electronic data” means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

“engineer” means a person who is a registered professional *engineer* under the *Professional Engineers Act 1988*;

“fixed price” means a price which is certain, except for the effect of provisional costs or sums, prime costs or sums, variations and any *cost escalation clause*;

“footing system” includes underslab plumbing and drainage;

“GST” has the same meaning as in the *GST Act*;

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* as amended;

“input tax credit” has the same meaning as in the *GST Act*;

“input taxed” has the same meaning as in the *GST Act*;

“Insured” means:

- (a) the owner of the *land*; or
- (b) a consumer who has entered into a *contract* with the *contractor* to have *residential construction work* carried out in *Queensland*;

“land” means the *land* upon which the *residential construction work* is or is to be constructed and includes a lot or *common property* in a *community titles scheme*;

“multiple dwelling” means a building of not more than three storeys in height (excluding the lowest level if it consists only of a car park) comprising at least one *residential unit*, whether or not the building also includes one or more *commercial purposes* or uses;

“owner” of *land* means:

- (a) for freehold *land* - the registered owner of the *land* under the *Land Title Act 1994*; or
- (b) for *land* held under a statutory lease or licence giving a right to possession of the *land* - the lessee or licensee; or
- (c) for *land* in respect of which there is a determination of the type referred to in the *Native Title (Qld) Act 1993* - a body corporate which by virtue of that determination has the exclusive right to regulate possession, occupation, use and enjoyment of *residential construction work* constructed on that *land*;
- (d) for *common property* under the *Body Corporate and Community Management Act 1997* - the body corporate;

“practical completion”, unless the context suggests otherwise, is that stage, in the opinion of BSA, when the *residential construction work* becomes fit for intended use or occupation;

“primary building work” means *primary building work* as defined in section 11 of the *Regulation*.

“Regulation” means any *Regulation* made under the Act;

“related roofed building” means a related roofed building as defined by section 9 of the *Regulation*.



“residential construction work” means residential construction work as defined in section 10 of the Regulation.

“replacement value” means any costs which would be reasonably incurred in respect of:

- (a) replacing (not necessarily on the same land) or reinstating the building to a condition substantially the same as, but not better or more extensive, when new; and
- (b) demolition and removal of debris to the extent that it is essential to enable the building to be reinstated or the site cleared;

“residential unit” means a part of a building designed or separate occupation as a residence;

“Statutory Insurance Scheme” means the insurance scheme established under Part 5 of the Act;

“supply” has the same meaning as in the GST Act;

“taxable supply” has the same meaning as in the GST Act;

“Terrorism” means any act or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in the pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- involves violence against one or more persons; or
- involves damage to property; or

- ❑ endangers life other than that of the person committing the action; or
- ❑ creates a risk to health or safety of the public or a section of the public; or
- ❑ is designed to interfere with or disrupt an electronic system.

“Tribunal” means the Commercial and Consumer Tribunal;

9.2 Interpretation

- (a) Unless the contrary intention appears, wherever terms defined by the Act or the *Regulation* appear in this policy, those terms have the same meaning in this policy as in the Act or the *Regulation* when the policy comes into force.
- (b) Headings are for convenience only and are not to be used in interpreting this policy.





F O R Q U E E N S L A N D E R S

Brisbane

(Head Office)
11 Edmondstone Street,
South Brisbane 4101
3225 2855
PMB 84,
Coorparoo DC, Qld 4151

Gold Coast

Suite 7
Robina Convenience Centre
86 Robina Town Centre Drive, Robina 4230
5575 7999
PO Box 3186
Robina Town Centre 4230

Sunshine Coast

Unit 7,
WIN Television Centre,
cnr Baden Powell St
& Maroochydore Rd,
Maroochydore 4558
5479 8500
PO Box 218,
Maroochydore, 4558

Toowoomba

Clestrain Mall,
131A Herries Street,
Toowoomba 4350
4632 9455
PO Box 107,
Toowoomba 4350

Rockhampton

164 Berserker Street
cnr Elphinstone St
North Rockhampton, 4701
4926 1922
PO Box 6337,
Central Queensland
Mail Centre, 4702

Mackay

Ground Floor,
25 River Street
Mackay, 4740
4957 4477
PO Box 1254,
Mackay 4740

Townsville

AAMI Building,
287 Ross River Road,
Aitkenvale 4814
4725 2588
PO Box 140,
Aitkenvale, 4814

Cairns

181 Aumuller Street,
Westcourt,
Cairns 4870
4031 6828
PO Box 211B,
Bungalow. 4870

Website

www.bsa.qld.gov.au



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