HELPING QUEENSLANDERS BUILD BETTER
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 1300 272 272 or visit your nearest BSA office.
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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 29 September 2006.

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.
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 (however this amount is limited to
BSA’s maximum liability of $200,000 specified in Part 4 of the Policy); 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 storey dwelling between the Insured and the one contractor;
(iv) residential construction work to the common property of a multiple storey 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 storey 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 liability - Related Roofed Building (that is not part of a contract for other Residential Construction Work), Single Detached Dwelling or Duplex

(a) This clause applies to liability under the policy in relation to:

(i) a related roofed building that is not erected or constructed as part of a contract for the performance of other residential construction work;
(ii) a single detached dwelling; or
(iii) a duplex.

(b) The maximum amount of payment for which BSA will be liable under the policy for a claim, in respect of a building mentioned in paragraph (a), that includes any or all of the
following components:
(i) loss resulting from non-completion of works;
(ii) defects that become apparent prior to practical completion of works;
(iii) subsidence or settlement that becomes apparent prior to practical completion of works;

will be the replacement value of the residential construction work or $200,000, whichever is less. That amount includes, where applicable, a maximum of $5,000 for alternative accommodation, removal and storage costs.

4.3 Maximum liability – Related Roofed Building (that is not part of a contract for other Residential Construction Work), Single Detached Dwelling or Residential Unit

(a) This clause applies to liability under the policy in relation to:
(i) a related roofed building that is not erected or constructed as part of a contract for the performance of other residential construction work;
(ii) a single detached dwelling; or
(iii) a residential unit.

(b) The maximum amount of payment for which BSA will be liable under the policy for a claim, in respect to a building mentioned in paragraph (a), that includes any or all of the following components:
(i) loss resulting from defective work that becomes apparent after practical completion;
(ii) subsidence or settlement that becomes apparent after practical completion;

will be the replacement value of the residential construction work or $200,000, whichever is less. That amount includes, where applicable, a maximum of $5,000 for alternative accommodation, removal and storage costs.
4.4 Maximum Liability – Common Property

(a) This clause applies to liability for common property under the Body Corporate and Community Management Act 1997 for any building that is a multiple storey dwelling.

(b) The maximum amount of payment for which BSA will be liable under this policy for a claim, in respect of the property mentioned in paragraph (a), that includes any or all of the following components:
   (i) loss resulting from non-completion of works;
   (ii) loss resulting from defective work;
   (iii) subsidence or settlement;

will be:

(iv) $1,000,000; or
(v) $200,000 times the number of residential units in the building; or
(vi) an amount calculated by BSA as the replacement value of the residential construction work consisting of the common property;

whichever is the lowest amount.

4.5 Maximum Liability – Related Roofed Building (that is part of a contract for other Residential Construction Work)

(a) This clause applies to liability under the policy in relation to a related roofed building that is erected or constructed as part of a contract for the performance of other residential construction work.

(b) The maximum amount of payment for which BSA will be liable under the policy for a claim, in respect of a building mentioned in paragraph (a), that includes any or all of the following components:
(i) loss resulting from non-completion of works;
(ii) loss resulting from defective work that becomes apparent prior to practical completion of works;
(iii) subsidence or settlement that becomes apparent prior to practical completion of works;

will be:

(iv) for a single detached dwelling and the related roofed building or buildings - $200,000;
(v) for each residential unit and the related roofed building or buildings - $200,000;
(vi) for common property under the Body Corporate and Community Management Act 1997 for any one building that is a multiple story dwelling including the related roofed building or buildings:
   a. $1,000,000;
   b. $200,000 times the number of residential units in the building;
   or
   c. an amount calculated by BSA as the replacement value of the residential construction work consisting of the common property;

whichever is the lowest amount.

(c) The maximum amount of payment for which BSA will be liable under this policy for a claim, in respect of a building mentioned in paragraph (a), that includes any or all of the following components:

(i) loss resulting from defective work that becomes apparent after practical completion;
(ii) subsidence or settlement that becomes apparent after practical completion;
(iii) for a single detached dwelling and the related roofed building or buildings - $200,000;
(iv) for each residential unit and the related roofed building and buildings - $200,000;
(v) for common property under the Body Corporate and Community Management Act 1997 for any one building that is a multiple storey dwelling including the related roofed building or buildings:

a. $1,000,000;
b. $200,000 times the number of residential units in the building; or
c. an amount calculated by BSA as the replacement value of the residential construction work consisting of the common property;

whichever is the lowest amount.

4.6 Maximum Liability – Failure to Complete Works

The maximum amount of payment for which BSA will be liable under this policy to an Insured where the contractor has failed to complete the contract or contracts is $200,000 in the aggregate, notwithstanding the Insured may be covered under this policy and any other policy or policies with the same contractor.

4.7 Total Maximum Liability

(a) To remove any doubt, the maximum amount payable by BSA in relation to a single detached dwelling, residential unit or related roofed building, regardless of whether a claim is made under Part 1, 2 or 3 of the policy, or any or all of them, is $400,000.
(b) To remove any doubt, the BSA is not liable for a claim in relation to defective work or subsidence or settlement which becomes apparent after *practical completion*, if the same defect was apparent prior to *practical completion*.

4.8 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.

4.9 Additional Limits for Multiple Storey Dwellings

(a) Where the residential construction work involves a multiple storey 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.
4.10 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.

4.11 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.

4.12 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 storey dwelling (and subject to clause 5.5) - where the Insured is the person who contracted with the engineer, architect or building designer 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 building designer;

(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.

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
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.

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 2002;

“associated building work” means associated building work as defined in Section 12 of the Regulation;

“BSA” means the Queensland Building Services Authority;

“building designer” means a person who holds a licence under Parts 11, 12 or 13 of the Regulation operating within the scope of work permitted within the scope of the licence;

“category 1 defect” means building work that is faulty or unsatisfactory because it either:
   (a) adversely affects the structural performance of a building;
   (b) adversely affects the health or safety of persons residing in or occupying a building;
(c) adversely affects the functional use of the building; or
(d) allows water penetration into a building.

“category 2 defect” means building work that is faulty or unsatisfactory, other than a category 1 defect, because:
(a) it does not meet reasonable standards of construction or finish; or
(b) it has caused a “settling in period” defect in 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;

“duplex” means a building which is a detached dwelling comprising two residential units;

“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 2002;

“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 under slab 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 storey 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” means when the works are complete in accordance with the contract and all relevant statutory requirements and inspections have been satisfactorily completed or the works are occupied, whichever is first;

“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 for 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;
- 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.