

classic[®]
builders



**10 YEAR
WARRANTY**

THIS WARRANTY DOCUMENT dated 14 June 2021

GIVEN BY: CLASSIC BUILDERS AUCKLAND LIMITED ("Classic")

TO: Blake & Magdalen Drummond

BACKGROUND:

- A. Classic has constructed and completed a residential dwelling at
Lot 74, 4 Ev Perry Way, Overlea, Glen Innes, Auckland
- B. Classic has agreed that the building works it has completed will be covered by a warranty relating to defects on the terms as set out in this Warranty Document.

Terms:

1. Definitions

1.1 In this Warranty Document:-

"Defect in Materials" means a significant defect in any material used in construction of the Dwelling that Classic (upon reasonable inspection) should have reasonably been expected to remedy or correct at the time of construction of the Dwelling.

"Defect in Structure" means physical damage suffered by the load bearing elements of the structure of the Dwelling which arise from a Defect in Workmanship which render the Dwelling unfit or unsafe for habitation.

"Defect in Workmanship" means a defect in works arising from a failure by Classic to:-

- (a) comply with the requirements of any relevant statute, statutory regulations, building code, building ordinance or by-law relating to the Dwelling that was in force and applicable at the time the building contract was issued for the Dwelling; or
- (b) comply with the terms of the building consent issued in respect of the Dwelling; or
- (c) comply with any instruction or recommendation given by the manufacturer or supplier regarding the installation or use of any material incorporated in the Dwelling; or
- (d) properly construct any part of the Dwelling in accordance with customary building trade practices and standards.

Provided it is accepted that issue of a Code of Compliance Certificate for the Dwelling will mean Classic has complied with items (a), (b), and (d) above.

"Defect Warranty" means the warranties provided by Classic under this Warranty Document.

"Dwelling" means the residential dwelling constructed by Classic at the Address including any garage or carport, but not including:-

- (a) any ancillary structure not part of or directly connected to the Dwelling;
- (b) any driveway, path, lawn, garden or yard area surrounding the Dwelling;
- (c) any power and utility supply lines, services or drains whether part of or directly connected to the Dwelling;
- (d) any chattels or appliances supplied with the Dwelling; and
- (e) any fixture, fitting, or other item not provided by Classic.

2. Warranties and Undertakings

2.1 Subject to the provisions herein, Classic warrants to rectify at its cost within a reasonable time:

- (a) any Defect in Materials or Defect in Workmanship which are within the scope of the terms of this Warranty Document and which have been notified to Classic under clause 4.1 below within 2 years from the date of issue of the Code of Compliance Certificate for the Dwelling.
- (b) any Defect in Structure which is within the scope of the terms of this Warranty Document and which has been notified to Classic under clause 4.1 below within 10 years from the date of issue of the Code of Compliance Certificate for the Dwelling.

If a Code of Compliance Certificate has not issued, or has been delayed, due to the actions or omissions of the Owners, then the above 2 year and 10 year time periods will run from the date of issue of the building consent or permit for the Dwelling.

2.2 In respect of any remedial work to be undertaken under clause 2.1(a) above, the Owners are deemed to acknowledge and agree that:-

- (a) it may not be possible in some circumstances to provide exact matching of materials and in such event the Owners will accept the replacement materials or work provided by Classic; and
- (b) only the directly affected area will be rectified and the Owners will have no claim against Classic in respect of any variance between existing work and remedial work.

2.3 In respect of any remedial work to be undertaken under clause 2.1(b) above, the Owners acknowledge and agree that the remedial work to be undertaken by Classic will be limited to works necessary to render the particular load bearing element of the structure safe and structurally sound.

3. Exclusions

3.1 The warranties from Classic under this Warranty Document **do not** cover:-

- (a) any works outside of the Dwelling ("works outside of the Dwelling" include, but are not limited to: outbuildings, landscaping, retaining structures, fences, paths, driveways or drains);
- (b) any damage or defect beyond Classic's reasonable control, including (but not limited to) damage or defects arising from any accident or extraordinary occurrence or circumstances, seepage, pollution, mould, contamination, landslides, land subsidence or erosion, condensation, shrinkage, contraction or expansion of any material, fire, earthquake, volcanic eruption, lightning, Acts of God or riot;
- (c) usual deterioration or damage from wear and tear or exposure, or normal drying out of timbers and materials;
- (d) any damage or loss arising from a malfunction or misuse of any electrical or mechanical appliances;
- (e) any works, materials, plans, or specifications which have been arranged or supplied by the Owners;
- (f) any damage or deterioration arising from improper or inadequate maintenance of the Dwelling by the Owners;
- (g) any additional damage or loss caused by any delay on the part of the Owners in notifying Classic of Defects in Materials, or Defects in Workmanship, or Defects in Structure;
- (h) any loss of use, or consequential loss or consequential damage of any kind;
- (i) any loss or damage which is normally covered by a home owners policy of general insurance, or is otherwise covered by an actual contract of insurance;
- (j) any defects which have not been notified to Classic within the timeframes specified at clause 2.1 above.

3.2 Where any materials are covered by a manufacturer's or supplier's guarantee or warranty, then a claim must first be made against the manufacturer or supplier before any claim is made against Classic. In such case, Classic will only be liable for a Defect in Materials:

- if the claim is rejected by the manufacturer or supplier on the grounds that Classic has caused the Defect in Materials; and
- it is found (or accepted by Classic) that Classic has caused the Defect in Materials.

4. Notice of Defect

4.1 Any Defect in Materials, or Defect in Workmanship, or Defect in Structure arising in respect of the Dwelling must be notified in writing to Classic within 30 days of such defect becoming apparent to the Owners or from the time such defect should have been apparent to them on reasonable inspection.

5. Limitation

5.1 The maximum liability of Classic under this Warranty Document (being the total aggregate value of any claims made under this Warranty Document) is limited to:

- the cost of construction of the Dwelling; or
- the amount actually paid from the Owners to Classic for the building works undertaken at the Address;

whichever is the lesser.

6. Transfer

6.1 In the event the Dwelling is sold, this Defect Warranty is not transferable to any subsequent purchaser without the express written consent of Classic being provided on Classic's formal Transfer of Warranty Document form. Classic shall have full and complete discretion as to whether it provides such consent and may impose such conditions as it deems appropriate, including (but limited to):

- (a) satisfactory evidence of change of legal ownership of the Dwelling must be given to Classic; and
- (b) Classic may require payment of a transfer fee of \$500 including GST is paid.

6.2 If Classic does not provide the written consent as required under clause 6.1 above, then this Defect Warranty shall immediately terminate on completion of the sale of the Dwelling.

7. Expiry

7.1 The obligations of Classic under this Warranty Document shall be extinguished and this Defect Warranty shall cease to have effect:

- in respect of any Defect in Materials or Defect in Workmanship, on the 2nd anniversary of the date of issue of the Code of Compliance Certificate for the Dwelling (or from the date of issue of the building consent or permit for the Dwelling as determined under clause 2.1 above); and
- in respect of any Defect in Structure, on the 10th anniversary of the date of issue of the Code of Compliance Certificate for the Dwelling (or from the date of issue of the building consent or permit for the Dwelling as determined under clause 2.1 above).

8. Dispute Resolution – Building Disputes Tribunal

8.1 In the event of any dispute or difference arising in connection with this Warranty Document, or the subject matter of this Warranty Document, including any questions about:

- the existence, validity, or application of this Warranty Document; and
- if any remedial actions are required from Classic to fulfil its obligations under this Warranty Document; and
- the extent of those remedial actions;

then the dispute (in the first instance) must be referred to Expert Determination in accordance with the Expert Determination Rules of the Building Disputes Tribunal; and it is further agreed that:

- the parties will comply and proceed in accordance with the Expert Determination Rules of the Building Disputes Tribunal; and
- the Expert shall be appointed by the Building Disputes Tribunal.

8.2 Following notification of the result of the Expert Determination under clause 8.1 above, each party must give notice to the other to confirm whether the result of the Expert Determination is accepted or rejected, and:

(a) Until both parties have given notice to confirm acceptance of the Expert Determination, either party may by service of a Notice of Arbitration, require the dispute to be referred to (and finally resolved by) arbitration in accordance with the Arbitration Rules of the Building Disputes Tribunal; and it is further agreed that:

- the parties will comply and proceed in accordance with the Arbitration Rules of the Building Disputes Tribunal; and
- the Arbitrator shall be appointed by the Building Disputes Tribunal; and
- the Arbitrator's decision and award shall be final and binding on the parties in all respects and there shall be no rights of appeal or review.

(b) If both parties have given notice to confirm acceptance of the Expert Determination, then:

- the dispute shall be treated as agreed and settled by the parties in accordance with the Expert Determination; and
- the Expert Determination shall be final and binding on the parties in all respects and there shall be no rights of appeal or review.

9. Application of Terms

9.1 The terms of this Warranty Document have been disclosed to the Owners prior to commencement of the building works at the Address and are deemed accepted by the Owners (and any claim made by the Owners pursuant to this Warranty Document will further ratify acceptance by the Owners of all terms of this Warranty Document).

9.2 Nothing in this Warranty Document will limit the rights and obligations of the parties imposed under the Building Act 2004.

10. Classic Warranties Limited

10.1 Where this Warranty Document remains applicable and has not expired or terminated, and:

- the Owners have made a valid claim under this Warranty Document; and
- Classic has failed to meet its obligations under this Warranty Document in respect of such claim;

then Classic Warranties Limited ("Classic Warranties") will guarantee performance of the obligations of Classic under this Warranty Document subject to clause 10.2 below.

10.2 Before Classic Warranties becomes responsible and liable under clause 10.1 above:

- (a) Any dispute must first be referred to the Disputes Resolution process and determined under clause 8 above; and
- (b) Classic must have been given a reasonable opportunity to satisfy its obligations, and have failed to make any progress to carry out its obligations within a reasonable time (having due regard to the nature of the defect and the remedial actions required); and
- (c) The Owners must make a specific claim under this clause 10.2, by notice to Classic Warranties to outline the failure by Classic and request the assistance of Classic Warranties; and
- (d) Upon receiving the notice under sub-clause (c) above, Classic Warranties will have a reasonable time and opportunity to address matters with Classic.

10.3 The obligations of Classic Warranties under this clause shall continue under any valid transfer completed under clause 6 above.

11. Notice

11.1 Every notice or communication to Classic or Classic Warranties shall be in writing and sent by mail or email to Classic and Classic Warranties as set out below and shall not be deemed to be notice to either unless so given:

General Manager (Warranties)
Classic Builders NZ Limited
160 Seventeenth Avenue
Tauranga South
TAURANGA 3112

Email: warranty@classicbuilders.co.nz

11.2 Any notice to the Owners may be delivered or posted or sent by email to the last known address of the Owners and shall be deemed given:

- In the case of email, on the day of being sent; and
- in the case of posting, by the next working day after posting.

SIGNED on behalf of
CLASSIC BUILDERS AUCKLAND LIMITED
by an authorised signatory



SIGNED on behalf of
CLASSIC WARRANTIES LIMITED
by an authorised signatory

Matt Lagerberg

