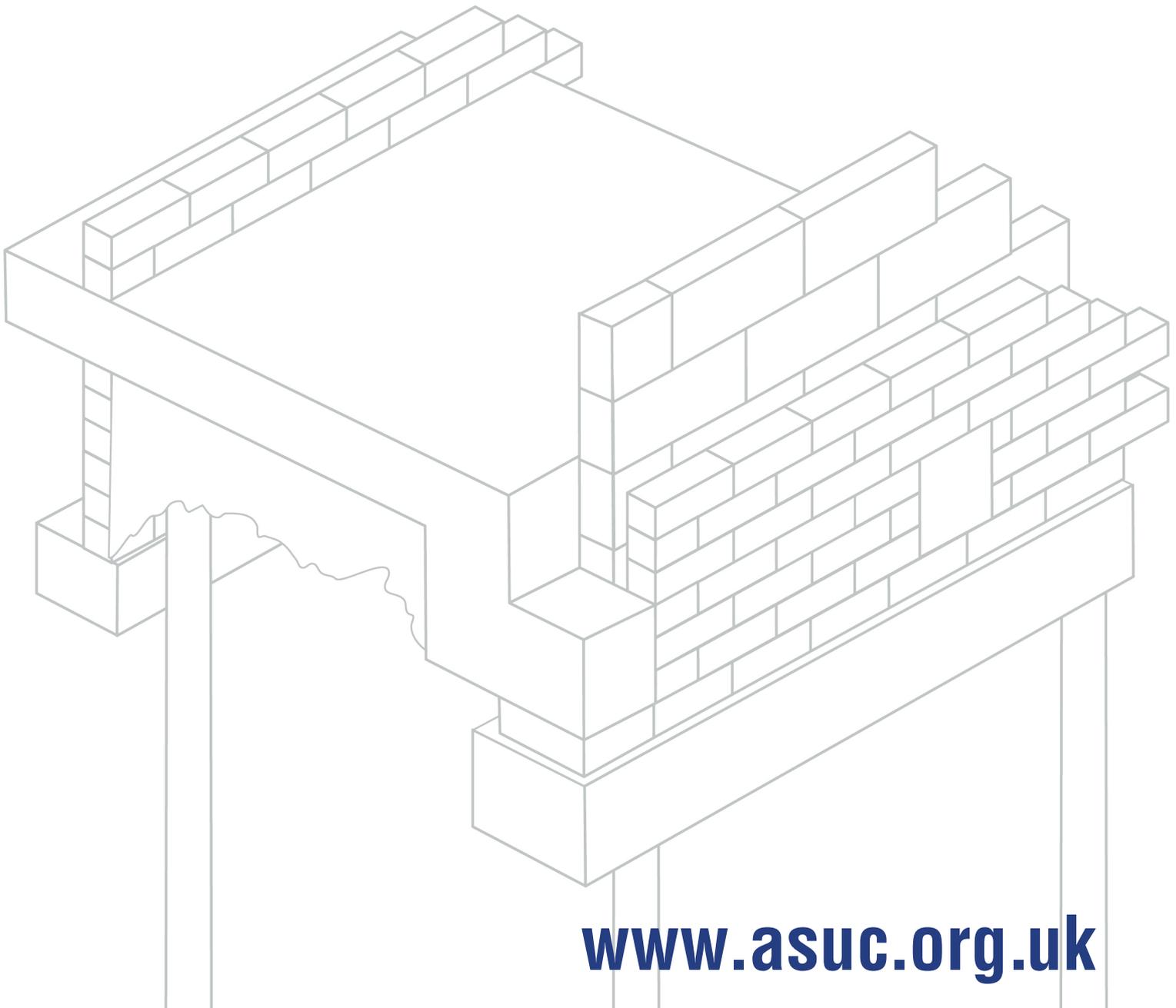




DEFECTS INSURANCE GUARANTEE

# **POLICY DOCUMENT**

Version 10



[www.asuc.org.uk](http://www.asuc.org.uk)



Welcome to **Your Defects Insurance Guarantee** insurance **Policy**. **You** have the benefit of this **Policy** as the **Foundation Works** undertaken at **Your Premises** have been completed by a member of ASUC. ASUC is an independent trade association promoting professional and technical competence. Its membership comprises leading specialist contractors and associated companies within the subsidence repairs, underpinning, retrofit basements and engineered foundation solutions. Further details are available at [www.asuc.org.uk](http://www.asuc.org.uk)

Although it is unlikely that there will be problems with **Your Premises**, the **Policy** gives **You** the comfort of knowing that particular types of problem which may arise in the first ten years following completion of the **Foundation Works** will be corrected.

**You** need to read these terms and conditions, **Your Certificate of Insurance**, and any endorsements attached to them, to make sure **You** know what is covered by the **Policy**. The ASUC member who has carried out the work at the **Premises** has applied for insurance on your behalf. If any of the information on the **Certificate of Insurance** is incorrect, please inform the **Scheme Administrator** as soon as possible.

The **Policy** does not cover any legal liabilities that **You** may have to others in connection with **You** owning **Your Premises**.

If **You** have any questions about the **Policy**, please telephone us on **0151 650 4300** or the person who arranged this **Policy** for **You**.

#### **HOW TO MAKE A CLAIM**

We know how difficult and stressful it can be if things go wrong with **Your Premises** and we aim to work with **You** to ensure that we can get **You** back to normality as quickly as possible.

If **You** feel **You** have a valid claim, please contact the **Scheme Administrator** on **0151 650 4300**.

MD Insurance Services Limited  
2 Shore Lines Building  
Shore Road  
Birkenhead  
Wirral  
CH41 1AU

**Gary Devaney**  
**Chairman and CEO**



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MD Insurance Services Limited, whose registered office is 2 Shore Lines Building, Shore Road, Birkenhead, Wirral CH41 1AU, is authorised and regulated by the Financial Conduct Authority (FCA). **Your Policy** is insured with MD Insurance Services Limited acting in its capacity as managing general agent for and on behalf of HSB Engineering Insurance Limited (HSBEIL).

HSBEIL is registered in England and Wales under company number 02396114. Registered Office: New London House, 6 London Street, London, EC3R 7LP, Tel: +44 (0)20 7264 7000. HSBEIL is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority in the UK (FCA registration number 202738)

The Financial Conduct Authority's website includes a register of all regulated firms.

**You** can contact the Prudential Regulation Authority at:

The Prudential Regulation Authority  
20 Moorgate  
London  
EC2R 6DA

Tel: +44 207 601 4444

Website: [www.bankofengland.co.uk](http://www.bankofengland.co.uk)

**You** can contact the Financial Conduct Authority at:

Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

Tel: 0800 111 6768 or +44 (0)20 7066 1000

Website: [www.fca.org.uk](http://www.fca.org.uk)



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## 1. INFORMATION ABOUT YOUR POLICY

### TYPES OF PROTECTION

We provide **Policyholders** with protection by insuring the **Foundation Works** identified in the **Certificate of Insurance** and resultant damage and costs, as specified in this **Policy**, for a period of 10 years from completion.

The **Defects Insurance Guarantee** is only available for **Foundation Works** carried out by members of ASUC. The ASUC member who has carried out the work at the **Premises** has applied for insurance on your behalf. The **Certificate of Insurance** enclosed with this **Policy** details the extent of the works insured.

This **Policy** automatically transfers to future owners of the **Premises** during the period of the **Policy**.

### YOUR PRIVACY

We will store personal information about **You** safely and keep it confidential. We may need to pass on personal information such as **Your** name and address to the **Contractor** to assist in the resolution of a claim. If required by a court or government body, we may be required to pass on personal information. We may need to tell a subsequent owner(s) about claims an earlier owner has made, if it affects what a subsequent owner of the **Premises** can claim under the **Policy**. For further details please refer to [www.mdisgroup.com/privacy-policy](http://www.mdisgroup.com/privacy-policy).

We will also pass on **Your** personal information to the **Underwriter** who may use **Your** personal information to make decisions about the cover we provide to **You**, any claims **You** make, or to detect and prevent fraud. The **Underwriter** also may record incoming and outgoing telephone calls with **You** for training, monitoring and quality control purposes.

For further details on how the **Underwriter** uses **Your** information and **Your** rights in relation to **Your** information, please see the **Underwriter's** Privacy Statement at <https://www.munichre.com/HSBEIL>.

### YOUR RESPONSIBILITIES

If **You** are a consumer, **You** are responsible for answering any questions in relation to any proposal for insurance cover honestly and to the best of **Your** knowledge, providing complete and accurate information which the **Underwriter** will require. This also applies to **Your** responses in relation to any assumptions **You** may agree to in the process of applying for insurance cover. This is particularly important before taking out a policy but also if **You** make a mid-term amendment to **Your Policy**.

If **You** fail to answer all questions completely and accurately and this influences the **Underwriter's** decision to accept the risk or the terms offered, this could invalidate the **Policy** and mean that claims may not be paid.

If **You** are a commercial customer **You** have a duty to give a fair presentation of risk to us. This means that **You** should disclose every material circumstance relevant to the risk being insured following a reasonable search within **Your** business to identify and verify such information. This should include information which **You** and where applicable **Your** senior management, persons responsible for arranging **Your** insurance or other relevant third parties know or ought to know and should include all information that would influence the judgement of the **Underwriter** or that would put the **Underwriter** on notice that it needs to make further enquiries.

Examples of material circumstances are:

- Special or unusual circumstances relating to the risk;
- Any particular concerns which led **You** to seek insurance cover for the risk; and
- Anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that would be dealt with in a fair presentation of risks for this type of insurance.

The information must be presented in a way, which would be reasonably clear and accessible to a prudent insurer. If **You** are unsure whether to disclose any information **You** should speak to us. **You** need to take into account the size and complexity of **Your** business, and allow **You** sufficient time to consider and / or assess **Your** insurance requirements.



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Failure to provide a 'fair representation' may result in a number of remedies by the **Underwriter**. If the breach was deliberate or reckless the **Underwriter** can void the contract and keep the premium. If the breach was not deliberate or reckless the **Underwriter** can void the contract, proportionately reduce a claim settlement or amend the insurance policy terms and conditions then review the merits of a claim on this basis.

**You** should therefore always provide complete and accurate information to us when we ask **You** about the insurance risks **Your** business faces before taking out a policy, at renewal and throughout the life of the **Policy**. This also applies to **Your** responses in relation to any assumptions **You** may agree to in the process of applying for insurance cover.

### **YOUR RIGHT TO CANCEL**

**You** can cancel the **Policy** within 14 days of the day after **You** receive the **Certificate of Insurance**. In the event of cancellation after the **Certificate of Insurance** has been issued, **You** will not be entitled to a return of premium. Any refund can only be paid back to the person or business who originally paid the premium and who still has an interest in the **Policy**. The **Scheme Administrator** reserves the right to charge an administration fee.

### **HOW TO CANCEL**

To cancel the **Policy**, send an email to [info@mdinsurance.co.uk](mailto:info@mdinsurance.co.uk) or write to:  
Scheme Administrator  
MD Insurance Services Limited  
2 Shore Lines Building  
Shore Road  
Birkenhead  
Wirral  
CH41 1AU.

**Your** letter or email must reach us within the 14-day period referred to above. **You** must return or destroy the **Certificate of Insurance**, if we have sent **You** one.



## 2. DEFINITIONS AND INTERPRETATION

### 2.1 DEFINITIONS

Wherever any of the following words or expressions are used in the **Policy** (including in the welcome and introductory pages), then such word or expression shall, unless the context otherwise requires, have the meaning given below. Where a word is given a particular contractual meaning, it will appear throughout the contract in bold.

<b>Certificate of Insurance</b>	The certificate issued by the <b>Scheme Administrator</b> on behalf of the <b>Underwriter</b> to signify acceptance of the <b>Foundation Works</b> at the <b>Premises</b> for insurance under this <b>Policy</b> .
<b>Condition Precedent</b>	An important legal term which sets out a step or action <b>You</b> must take. If <b>You</b> do not comply with or meet the requirements set out in a <b>Condition Precedent You</b> will not be able to bring a claim under the <b>Policy</b> and the <b>Underwriter</b> will not become legally liable to pay that claim.
<b>Contractor</b>	The ASUC member (named in the <b>Certificate of Insurance</b> ) with whom the <b>Policyholder</b> or any other party has entered into an agreement or contract for the <b>Foundation Works</b> .
<b>Damage</b>	Physical loss, destruction or damage to the <b>Premises</b> or a condition requiring immediate remedial action to prevent imminent structural instability to the <b>Premises</b> , caused by a <b>Defect</b> and which is first discovered during the <b>Period of Insurance</b> .
<b>Defect</b>	Any defect in the design, specification, workmanship, materials or components of the <b>Foundation Works</b> .
<b>Defects Insurance Guarantee</b>	The insurance cover provided by the <b>Underwriter</b> in accordance with, and subject to, the provisions of this <b>Policy</b> .
<b>Excess</b>	The amount the <b>Policyholder</b> is required to pay in the event of a valid claim under the <b>Policy</b> . The <b>Excess</b> is index-linked in accordance with the condition of the <b>Policy</b> in section 6 entitled ' <b>Indexation</b> '.  Note that a separate <b>Excess</b> shall apply to each separately identifiable cause of loss or damage giving rise to loss or damage for which a payment is made under the <b>Policy</b> by the <b>Underwriter</b> , regardless of whether more than one cause of loss is notified at the same time.
<b>Financial Limit</b>	The maximum the <b>Underwriter</b> will pay for any claims under the terms of the <b>Policy</b> .
<b>Foundation Works</b>	The underpinning and foundation works, subsidence repairs and any associated structural repairs and ancillary works carried out at the <b>Premises</b> under a contract or agreement between the <b>Contractor</b> and the <b>Policyholder</b> or any other party who has entered into an agreement or contract.
<b>Insolvency</b>	The occurrence of any of the following events:  a) an order is made, or a resolution is passed, for the winding-up, administration or bankruptcy of the <b>Contractor</b> (except for the purposes of solvent amalgamation or reconstruction previously approved by the <b>Underwriter</b> in writing); or  b) a liquidator, trustee, administrator, administrative receiver, receiver, manager, trustee in bankruptcy or similar official is appointed over the whole or any part of the assets of the <b>Contractor</b> , or the <b>Contractor</b> , or the directors of the <b>Contractor</b> , request any person to appoint any of the same; or  c) a notice of intention to appoint an administrator, or a notice of appointment under Schedule B1 to the Insolvency Act 1986, is issued by the <b>Contractor</b> or its directors.
<b>Limit of Indemnity</b>	The maximum liability of the <b>Underwriter</b> in respect of the <b>Premises</b> , being the amount shown as the <b>Sum Insured</b> on the <b>Certificate of Insurance</b> or the <b>Financial Limit</b> , whichever is the lesser. The <b>Limit of Indemnity</b> is index-linked in accordance with the condition of the <b>Policy</b> in section 6 entitled ' <b>Indexation</b> '.
<b>Period of Insurance</b>	The period commencing and ending on the dates specified in the <b>Certificate of Insurance</b> .



<b>Policy</b>	These Terms and Conditions of Insurance, the <b>Certificate of Insurance</b> and any endorsements thereto.
<b>Policyholder / You / Your</b>	The owner acquiring a freehold or leasehold interest, or their successors in title, or any mortgagee in possession or lessor and for whom a <b>Certificate of Insurance</b> has been issued for the <b>Premises</b> showing that the relevant cover is applicable.
<b>Premises</b>	The property described on the <b>Certificate of Insurance</b> including the structure, all non-load bearing elements and fixtures and fittings for which the <b>Policyholder</b> is responsible. <b>Premises</b> shall be deemed to include the <b>Foundation Works</b> which are the subject of this <b>Policy</b> .
<b>Scheme Administrator</b>	MD Insurance Services Limited, 2 Shore Lines Building, Shore Road, Birkenhead, Wirral, CH41 1AU (acting as agent on behalf of the <b>Underwriter</b> ). The terms 'we', 'us' or 'our' denote MD Insurance Services Limited.
<b>Sum Insured</b>	The cost of the <b>Foundation Works</b> at the <b>Premises</b> as specified within the <b>Certificate of Insurance</b> .
<b>Underwriter</b>	HSB Engineering Insurance Limited (HSBEIL).

## 2.2 INTERPRETATION

1. References to this **Policy** or to any other document or contract referred to in this **Policy** means this **Policy** or such other document or contract as amended, varied, supplemented, modified or novated from time to time.
2. In this **Policy** (unless the context otherwise requires):
  - a) the words "including" and "include" and words of similar effect shall be deemed to have the words "without limitation" following them;
  - b) words importing persons shall include natural persons, firms, associations or other unincorporated bodies, companies, corporations or other bodies corporate and vice versa;
  - c) words importing the singular shall include the plural and vice versa;
  - d) references to a section are to a section of this **Policy**;
  - e) any reference to any legislative provision, shall be deemed to include any subsequent re-enactment or amending provision and any regulations made under it;
  - f) words importing the masculine shall include the feminine.
3. The headings in this **Policy** are for ease of reference only and shall not affect its construction or interpretation.



### 3. INSURING AGREEMENT

The **Underwriter** will indemnify the **Policyholder** against all claims discovered and notified to the **Underwriter** during the **Period of Insurance** in respect of the cost of complete or partial rebuilding or rectifying work to the **Foundation Works** which has been affected by **Damage**.

Cover under this section 3 will only respond in the event of **Damage** arising from the **Foundation Works** carried out by the **Contractor**.

Provided always that the liability of the **Underwriter** does not exceed the reasonable cost of rebuilding the **Foundation Works** to its original specification.

The **Excess** shall be as specified in the **Certificate of Insurance**.

**In the event of a valid claim under this Policy** giving rise to **Damage** the **Underwriter** will (at its sole discretion) arrange to have the **Defect** corrected and / or pay the cost of repairing, replacing or rectifying any **Damage** to the **Foundation Works**.

#### 3.1 FINANCIAL LIMITS

1. The maximum the **Underwriter** will pay for all claims is the **Sum Insured** or £500,000, whichever is the lesser.
2. Unless stated otherwise in the **Certificate of Insurance**, the **Financial Limits** above are index-linked in accordance with the condition of the **Policy** in section 6 entitled '**Indexation**'.
3. Claims under this section are subject to the **Excess** as detailed in the **Certificate of Insurance**.
4. Please note in the event that **You** are not the first owner of the **Premises**, the **Financial Limits** may have already been utilised by a previous owner and **You** will only be entitled to the remainder.

#### 3.2 CLAIMS PROCEDURE

1. On discovery of any occurrence or circumstance that is likely to give rise to a claim, it is a **Condition Precedent** that the **Policyholder** should, as soon as possible please contact the **Scheme Administrator** on 0151 650 4300.
2. Once **You** have notified the **Scheme Administrator** of a potential claim, it is a **Condition Precedent** that **You**:
  - a) send evidence (including photographs and reports if appropriate) to the **Scheme Administrator** confirming that there has been **Damage**; and
  - b) take all responsible steps to prevent further loss or damage; and
  - c) allow us to have all reasonable access to the **Premises** during normal working hours; and
  - d) obtain permission to access neighbouring land and obtain any other permission needed to allow investigations and work; and
  - e) To the extent that this is in **Your** possession or control, provide the **Scheme Administrator** with all information and documentation it may request which is necessary in order to investigate the claim.



## 4 ADDITIONAL COVER

In addition to any applicable cover under section 3, the **Underwriter** will pay for the following additional covers:

### 4.1 ADDITIONAL COSTS

Such additional reasonable costs and expenses as are necessarily incurred by the **Policyholder** in repairing, replacing or rectifying any part of the **Premises** other than the **Foundation Works** which has been affected by **Damage** provided always that the liability of the **Underwriter** is limited to a maximum of 25% of the **Sum Insured** as stated in the **Certificate of Insurance**.

### 4.2 ALTERNATIVE ACCOMMODATION COSTS

If the **Premises** is rendered uninhabitable as a result of **Damage** then the **Underwriter** will pay the necessary and reasonable cost of alternative accommodation incurred by the **Policyholder** with our prior written consent, including removal and storage of the **Policyholder's** own possessions (for a period not exceeding 26 weeks).

The **Underwriter** will not pay for any costs or expenses payable in respect of any **Premises** not occupied by the **Policyholder** as its main and permanent residence.

### 4.3 FEES

Such Architects', Surveyors', Legal, Consulting Engineers' and other professional fees as are necessarily and reasonably incurred by the **Policyholder** with our prior written consent in relation to the complete or partial rebuilding or rectifying work to the **Premises** (excluding any costs or fees incurred by the **Policyholder** in investigating and / or preparing a claim or legal fees).

### 4.4 REMOVAL OF DEBRIS

The reasonable costs and expenses incurred by the **Policyholder** with our prior written consent in respect of:

- a) removal of debris at; and / or
- b) dismantling or demolishing; and / or
- c) shoring up,

the **Premises**.

The liability of the **Underwriter** during the **Period of Insurance** for any one claim in respect of 4.2 to 4.4 shall not exceed £10,000 and shall be index-linked in accordance with the condition of the **Policy** in section 6 entitled 'Indexation'.



## 5. EXCLUSIONS

The **Underwriter** shall not be liable to the **Policyholder** for any of the following:

### 1. ALTERATIONS

Loss or damage due to or in connection with any alteration, modification or addition to a **Premises** after the issue of the **Certificate of Insurance** unless the **Scheme Administrator** has been informed, the **Policy** endorsed and any applicable additional premium paid to the **Scheme Administrator**.

### 2. ASBESTOS

Loss or damage arising from or in connection with asbestos or the presence of asbestos in the **Premises**.

### 3. CHANGE IN COLOUR

Any change in colour, texture, opacity or staining or other ageing process to any element of the **Foundation Works** or the **Premises**.

### 4. DEFECTS IN EXISTING WORKS

Loss or damage due to or in connection with any defect in the design, workmanship, materials or components of the **Premises** that was installed or constructed prior to the **Foundation Works** that are the subject of this insurance.

### 5. DEFECTS PERIOD

Any **Damage** occurring within the first 24 months of the **Policy** commencing from the date specified on the **Certificate of Insurance** as the commencement of cover. Such **Damage** will remain the responsibility of the **Contractor** except that this exclusion shall not operate in the event of **Insolvency** of the **Contractor**.

### 6. ENDORSEMENT

Anything excluded by an endorsement issued by the **Scheme Administrator** and noted on the **Certificate of Insurance**.

### 7. FLOODING AND WATER TABLE

Loss or damage resulting from or in connection with flooding or failure of flood prevention / defence measures, however caused, or from a change in the water table level. This exclusion shall not however apply to any seasonal change in the water table level.

### 8. HUMIDITY

Loss or damage caused by, in connection with or consequent upon humidity, normal dampness or condensation in a **Premises** that is not the direct result of **Damage**.

### 9. INDIRECT LOSS

Unless expressly provided for in this **Policy**, economic or financial loss of any description (including costs arising from inconvenience or distress, loss of enjoyment, loss of use, reduction in value of the **Premises**, loss of income or business opportunity) arising either directly or indirectly as a result of the events or circumstances that led to **Your** claim.



## 10. MAINTENANCE AND USE

Inadequate maintenance of the **Foundation Works** or the imposition of any load greater than that for which the **Foundation Works** was designed or the use of a **Premises** for any purpose other than that for which it was designed, unless (in each case) the **Scheme Administrator** has been informed in writing, the **Policy** endorsed and any applicable additional premium paid to the **Scheme Administrator**.

## 11. PERSONAL INJURY

Any costs, losses, expenses or damages for death, bodily injury, disease, illness or injury to mental health, however caused.

## 12. PRIOR KNOWLEDGE

Anything which would constitute a valid claim under the **Policy** and about which the **Policyholder** was aware prior to purchasing the **Premises** and as a consequence could have agreed a reduction in the purchase price for the **Premises** or obtained any other remedy, benefit or compensation of any kind.

## 13. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

Any loss or destruction of or damage to any property, any loss or expense whatsoever, any consequential loss or any legal liability directly or indirectly caused by or contributed to by, or arising from:

- (a) (i) ionising radiations or contamination by radioactivity from nuclear fuel or from nuclear waste from the combustion of nuclear fuel;
- (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (b) the use of any weapon or device:
  - (i) dispersing radioactive material and / or ionising radiation; or
  - (ii) using atomic or nuclear fission and / or fusion or other like reaction
- (c) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter but this will not apply in respect of radioactive isotopes (other than nuclear fuel or nuclear waste) used for the purposes for which they were intended;
- (d) any chemical, biological, bio-chemical, or electromagnetic weapon.

## 14. REASONABLENESS

In the event of a valid claim under the **Policy** the **Underwriter** shall only be responsible for reasonable and necessary costs, professional fees and expenses incurred in repairing, replacing or rectifying a **Defect** and any resulting **Damage** and that a reasonable person would incur if spending their own money.

In respect of the settlement of any claim, the **Underwriter** will try to provide or pay for items that match, or are largely similar to, existing items. However, the **Underwriter** will not pay any costs that are more than 20% higher than the original cost of the items.

## 15. SANCTIONS LIMITATIONS

The **Underwriter** shall not be deemed to provide cover and shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that **Underwriter** to any sanction, prohibition or restriction under United Nations resolutions, or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.



#### 16. SEEPAGE

Loss or damage caused by seepage of water into the **Premises** below ground floor slab level.

#### 17. SETTLEMENT AND OTHER GROUND MOVEMENT

Loss or damage caused by, associated with or in connection with any movement of land or settlement of bedding down of the **Foundation Works**, unless the loss or damage is caused by a **Defect**.

#### 18. SONIC BANGS

Loss or damage occasioned by or connected with pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

#### 19. SPECIAL PERILS

Loss or damage which would be covered under a standard buildings insurance policy (whether or not **You** have in fact purchased such a policy). For example, this means that we do not provide cover for loss or damage caused or contributed to by any of the following:

- a) fire, lightning or explosion;
- b) earthquake;
- c) flood;
- d) storm;
- e) aircraft or other flying objects, or articles falling from them;
- f) water, oil or any other liquids leaking or bursting from tanks, pipes, heating systems or other equipment;
- g) malicious acts (such as vandalism or criminal damage);
- h) theft or attempted theft; or
- i) accidental damage.

Where loss or damage has been caused by any of the above, this exclusion will apply even if the loss and damage has also been caused or contributed to, at the same time, by a defect which would otherwise have been covered under this **Policy**.

#### 20. SUBSIDENCE

Loss or damage caused by or consequent upon subsidence, heave or landslip, except where such loss or damage is as a direct result of a **Defect**.

#### 21. TERRORISM

Any loss, damage, liability, cost or expense of whatsoever nature directly or indirectly caused by, resulting from, arising out of or in connection with an act of terrorism. For the purposes of this exclusion, an act of terrorism shall mean an act involving the use of force or violence and / or the threat thereof that is committed for political, religious, or ideological purposes and with the intention to influence any government and / or to put the public, or any section of the public, in fear. The perpetrators of an act of terrorism can be acting alone or on behalf of, or in connection with, any organisation(s) or government(s).

#### 22. THIRD PARTY DESIGN

Loss or damage caused by defective design of the **Foundation Works** where the **Foundation Works** were designed by a party other than the **Contractor**.

#### 23. TOXIC MOULD

Loss or damage arising out of or in connection with any bacteria, yeasts, mildew, viruses, fungi, mould or their spores, mycotoxins or other metabolic products in a **Premises** that is not the direct result of a defect.



#### 24. TREES

Loss or damage due to, associated with or arising from:

- a) trees planted after the completion of the **Foundation Works** that cause damage to the **Premises**; or
- b) the failure of the **Policyholder** to comply with all recommendations stipulated by the Structural Engineer appointed in respect of the **Foundation Works** in so far as such recommendations are applicable to the maintenance and or removal of trees at the **Premises** or adjoining properties.

#### 25. VERMIN

Loss or damage caused by, connected with or consequent upon the actions of rodents, vermin or insect infestation.

#### 26. WAR RISKS

Any consequence whatsoever which is the direct or indirect result of any of the following, or anything connected with any of the following, whether or not such consequence has been contributed to by any other cause or event:

- (a) war, invasion, act of a foreign enemy, hostilities or a warlike operation or operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, mutiny or military uprising, martial law; and
- (b) nationalisation, confiscation, requisition, seizure, damage or destruction by or by order of any government or any local or public authority; and
- (c) any action taken in controlling, preventing, suppressing or in any way relating to (a) and / or (b) above.

#### 27. WEAR AND TEAR

Loss or damage caused by or associated with any wear and tear, normal dampness, condensation, thermal movement, movement between different types of materials or shrinkage or normal deterioration (whether caused by neglect or otherwise).

#### 28. WILFUL ACTS

Any wilful neglect or criminal act of the **Policyholder** or any other person.



## 6. CONDITIONS

### 1. APPLICABLE LAW

The law of England and Wales will apply to this contract unless:

- a) **You** and We agree otherwise; or
- b) at the date of the contract **You** are a resident of (or, in the case of a business, the registered office or principal place of business is situated in) Scotland, Northern Ireland, the Channel Islands or the Isle of Man, in which case (in the absence of agreement to the contrary) the law of that country will apply.

### 2. CHANGES TO YOUR POLICY

**You** must take reasonable care to provide complete and accurate answers to the questions **We** or the **Underwriter** ask when **You** make changes to **Your Policy**. If any information **You** provide is not complete and accurate the **Underwriter** may:

- a) void the amendment to **Your Policy** and refuse to pay any claim; or
- b) not pay any claim in full; or
- c) charge an additional premium; or
- d) change the **Excess** and / or the extent of cover.

### 3. CLAIMS SETTLEMENT – COMPONENT ELEMENT / ITEM LIMITS

The **Underwriter** will have the option to limit any amount paid under this **Policy** for any defective or damaged item or component element of the **Foundation Works** to an amount not exceeding 250% of the original replacement cost of the same item or component element as at the time the **Foundation Works** took place, provided always that the liability of the **Underwriter** does not exceed the **Financial Limit** of the **Policy**.

### 4. CONTRIBUTION

If at any time of any occurrence giving rise to a claim under this **Policy**:

- a) there is (or would be, but for the existence of this insurance) any other insurance applicable; or
- b) the **Policyholder** has entitlement to any statutory damages, damage or compensation; or
- c) the **Policyholder** has initiated legal proceedings from which compensation may be received,

then any applicable cover under this **Policy** shall be limited to such amount in excess of such insurance, damages or compensation (without prejudice to any **Financial Limits** specified in the **Policy**) and shall not be called into contribution.

### 5. FRAUD

If a claim made is fraudulent or fraudulently exaggerated or supported by a false statement or fraudulent means or fraudulent evidence is provided to support the claim, the **Underwriter** will:

- a) refuse to pay the claim which will be deemed forfeit as a result,
- b) recover any sums paid in respect of the claim,
- c) by notice to the **Policyholder** terminate the **Policy** with effect from the date of the fraudulent act without any return of premium.

If the **Underwriter** terminates the **Policy** under (c) above, then the **Underwriter** may refuse to provide cover after the time of the fraudulent act. This will not affect any liability the **Underwriter** may have in respect of the provision of cover before the time of the fraudulent act.



## 6. INDEXATION

The **Limit of Indemnity** and **Excess** referred to within the **Certificate of Insurance** will be increased in line with the RICS House Re-Building Index or 5% per annum compound (whichever is the lesser) on each anniversary of the commencement of the **Policy**. For the purpose of settlement of any claim hereunder, the **Limit of Indemnity** and **Excess**, as adjusted in accordance with the foregoing provisions, shall be regarded as the **Limit of Indemnity** and **Excess** at the time of discovery by the **Policyholder** of such claim.

## 7. MULTI-OCCUPIED BUILDINGS

Where the **Premises** is part of a multi-occupied building (where a number of properties are contained within one building), a single party shall normally co-ordinate the claim in respect of all **Policyholders** of the multi-occupied building and where that is the case the **Scheme Administrator** shall not be obliged to correspond with the individual **Policyholder** regarding such claims.

## 8. RECOVERIES FROM THIRD PARTIES

The **Underwriter** is entitled to take action, at their own expense, to enforce any right **You** may have against a third party. In some situations it may be necessary to take action to protect a right of recovery against a third party before the **Underwriter** has had chance to consider **Your** claim and confirm coverage under this **Policy**. In such a situation it is a **Condition Precedent** that **You** cooperate with the **Underwriter** to take the steps required to protect the right of recovery. The **Underwriter** will be responsible for paying any costs or expenses of taking any such agreed steps. If cover for **Your** claim under the **Policy** is subsequently declined, **You** will then have the option of continuing with the recovery action against the third party, but **You** will have to pay any costs incurred after the **Underwriter** has notified **You** that **Your** claim under this **Policy** is not covered. The **Underwriter** will not seek repayment from **You** of any costs incurred prior to the claim under the **Policy** being declined.

For the purpose of this condition any third party shall not be deemed to include the **Contractor** who is named in the **Certificate of Insurance**.

## 9. REINSTATEMENT OF LIMIT OF INDEMNITY

Where any successful claim has been made under the **Policy** and which is met by the **Underwriter** for less than the **Limit of Indemnity**, such **Limit of Indemnity** shall (in accordance with the provisions of this **Policy**) be reduced to the extent such claim has been met by the **Underwriter**. In such circumstances, the **Policyholder** may request that the **Limit of Indemnity** be reinstated. The decision to reinstate any **Limit of Indemnity** shall be at the sole discretion of the **Underwriter** and is subject to payment by the **Policyholder** of any additional premium required to be paid in respect of any such reinstatement, as notified by the **Underwriter**

If the **Underwriter** accepts **Your** request to reinstate the **Limit of Indemnity**, an endorsement to the **Policy** will be issued showing that the limit has been reinstated. If no such endorsement has been issued, then the **Limit of Indemnity** has not been reinstated regardless of any request **You** or a previous owner may have made.

## 10. TAX

Any claim we pay will not include VAT unless **You** cannot recover part or all of the VAT **You** have paid.



## 11. TERMINATION

This **Policy** will terminate automatically without refund of premium in the event that:

- a) the **Premises** is destroyed by a cause other than that insured against in this **Policy**; or
- b) the **Underwriter** has paid the maximum amount for which it will be liable under the **Policy** in accordance with the **Limit of Indemnity** unless the **Limit of Indemnity** has been reinstated in line with the Reinstatement of **Limit of Indemnity** Condition.

The cover under this **Policy** will terminate automatically without refund of premium in the event that the **Underwriter** has paid the maximum amount for which it will be liable under the **Policy**.

## 12. THIRD PARTY RIGHTS

A person who is not a party to this **Policy** has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this **Policy**, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 13. UNDERWRITER'S RIGHTS

In the event of any occurrence which may give rise to a claim under this **Policy**, it is a **Condition Precedent** that the **Underwriter** and/or its agents (including the **Contractor** and / or their subcontractors) shall, with the permission of the **Policyholder**, be entitled to enter the **Premises** and be given all reasonable access in order to carry out rectification works or the complete or partial rebuilding of the **Premises**. If such permission is unreasonably withheld by the **Policyholder** then the **Underwriter** may refuse to indemnify the claim under the **Policy** and/or the **Policyholder** shall be responsible for any additional costs caused by the delay in carrying out such works and the **Underwriter** has the sole option to terminate the **Policy** with immediate effect.



## 7. HOW TO MAKE A COMPLAINT

1. We have the authority to administer complaints on behalf of the **Underwriter**. We aim to provide a first class service to every **Policyholder**. However, occasionally an enquiry or a complaint may arise, often as a result of a misunderstanding, which will usually be resolved quickly and to the satisfaction of the **Policyholder**.
2. If **You** have an enquiry or cause to make a complaint regarding **Your Policy** then **You** should, in the first instance, contact the insurance agent who arranged the insurance for **You**. If they are unable to resolve the problem, please contact:

The Complaints Officer  
MD Insurance Services Limited  
2 Shore Lines Building  
Shore Road  
Birkenhead  
Wirral  
CH41 1AU

Email: [complaints@mdinsurance.co.uk](mailto:complaints@mdinsurance.co.uk)  
Tel: 0151 650 4300

3. A copy of our Complaints Procedure will be provided with an acknowledgement of **Your** complaint.
4. Any complaint that cannot be resolved by us may be referred to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaint process or are available on request. This complaint procedure is without prejudice to the **Policyholder's** right to take legal action. Their address is:

The Financial Ombudsman Service  
Exchange Tower  
London  
E14 9SR

Or via the website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

5. In all cases, the Reference Number appearing in the **Certificate of Insurance** should be quoted.
6. **Financial Services Compensation Scheme**

Policies issued by us on behalf of the **Underwriter** are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the scheme if the **Underwriter** is unable to meet its obligations under the terms of the **Policy**. If **You** are entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of the **Policy** contract. Further information about compensation scheme arrangements are available from the Financial Services Compensation Scheme. Their address is:

Financial Services Compensation Scheme  
10th Floor  
Beaufort House  
15 St Botolph Street  
London  
EC3A 7QU

Or via the Scheme website: [www.fscs.org.uk](http://www.fscs.org.uk)

2 Shore Lines Building | Shore Road | Birkenhead | Wirral | CH41 1AU

**T** 0151 650 4300 | **F** 0151 650 4344 | **E** [info@mdinsurance.co.uk](mailto:info@mdinsurance.co.uk)

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