

New Zealand  
Certified  
Builders  
Association



# Specified Residential Dwelling Indemnity Agreement

**Terms and Conditions**





# Disclosure information

## Your right to change Your mind and cancel

You may let Us know that You do not want the Halo Specified Residential Dwelling Indemnity Agreement within 5 working days of confirmation of the Policy, by giving written notice to Halo Guarantees Limited. Your Indemnity will then be cancelled, and the purchase price of the Indemnity will be refunded by Us. In the event of cancellation of Your Indemnity, the refund made by Halo Guarantees Limited will be made to the person that made payment of the Indemnity. Please ensure Your notice of cancellation includes Your name and the address of the property affected.

**This document contains Your Indemnity terms, Provisions, Exclusions and Conditions. It is important that You read it, understand it and retain it in a safe place.**

## The notice of cancellation must be sent to:

**Halo Guarantees Limited**

PO Box 13415,  
Tauranga Central,  
Tauranga 3141

or **hello@halo.nz**



STAY COVERED FOR  
8 YEARS WITH OUR NEW  
INDEMNITY AGREEMENT

- REDUCED LIABILITY
- RETIRE WITH PEACE  
OF MIND -  
WITHOUT RETAINING  
ONGOING MEMBERSHIP
- LESS SUB-TRADE  
CHASING.



## More cover. Less worry.

Take a weight off, knowing you're covered when you add the **Indemnity Agreement\*** to your Halo application.

\*For more details on the new Specified Residential Dwelling Indemnity Agreement please refer to [nzcb.nz/members/halo/](http://nzcb.nz/members/halo/)



# Indemnity Wording

## Section 1 Introduction

The Builder having presented to Halo a signed proposal form bearing the date shown in the Schedule and containing particulars and statements which are hereby considered to be the basis of this indemnity agreement and incorporated herein and having paid or promised to pay the premium, it is hereby agreed:

- Halo shall indemnify the Builder to the extent and in the manner detailed herein during the period of this Policy as specified in the Schedule.
- The terms and conditions of the Specific Dwelling Indemnity Agreement and rights and obligations of both you and Halo Guarantees Limited are set out in this document.

### **About Your Residential Dwelling Specific Indemnity**

You are a member of NZ Certified Builders and have entered into a contract to perform building work on a specific dwelling as detailed in the attached schedule to this Specified Residential Dwelling Indemnity Agreement.

The Owner of the dwelling You are undertaking building work on has purchased a Halo Guarantee policy in respect of the building work and materials.

Subject to the provisions set out in this Agreement including the Schedule, We will indemnify You against Halo's recovery action under the Guarantee for claims brought against You in respect of the Dwelling in the following circumstances:

- Defects resulting from product failure/ materials defects.
- Defects caused by sub-trade(s) – where all reasonable efforts have been made by the member to have their sub-contractor rectify.

You do not need to be a current member of NZ Certified Builders to have the benefit of this Indemnity.

We will notify You in writing of the acceptance of the Indemnity and it will only come into force when We send that notification and following receipt of payment of Your fee.

Once Your Indemnity comes into force, You are covered in accordance with the terms and conditions contained in this document including the Schedule for the duration of Your Indemnity, unless the Indemnity is cancelled earlier.



## Section 2

# Important Information

### It is important that:

- You check Your Indemnity Schedule (if applicable) to ensure the details are correct
- You notify Us as soon as possible of any inaccuracies on Your Indemnity Schedule
- You comply with any obligations detailed under each section of this document and under the Indemnity Agreement as a whole
- You read the conditions in section 5 of this document. If You do not meet these conditions, We may reject the Indemnity

### Accuracy of Information

In deciding to offer/accept this Indemnity and in setting the terms and cost, We have relied on the information in the Indemnity Application Form and/or Indemnity Schedule, as applicable.

If You become aware that any information You or any other party has given is incomplete or inaccurate, or if You become aware of any issue(s) or circumstance(s) which may affect Our decision to accept Your application, You must contact Us as soon as possible. Notices must be delivered to:

#### Halo Guarantees Limited

PO Box 13415, Tauranga Central  
Tauranga 3141  
or [hello@halo.nz](mailto:hello@halo.nz)

If the information in the Specific Dwelling Indemnity Application Form or Schedule is not accurate, We may refuse to accept a claim and/or cancel the Indemnity.

### Cost of the Specific Dwelling Indemnity Policy

The cost of the Indemnity is covered by a single fee set out in the Indemnity Schedule and payable prior to the commencement of the Indemnity.

### Period of Cover

Subject to acceptance by Us of Your application, the period of cover under this Indemnity begins on the 2nd year anniversary of the Practical Completion Date of the Works, and ends 8 years after that date, unless the Indemnity is cancelled or voided earlier in accordance with the terms and conditions of this document.

The Indemnity lasts until it is exhausted (see below) or 8 years after commencement.

### Maximum Limit of Indemnity

The Maximum total cover under the Indemnity is the lesser of:

- The value of Your Building Contract; or
- \$1,000,000 including GST or value of the Building Contract.

The maximum total level of indemnity under the agreement is 25% of the value of the Building Contract, or \$250,000 including GST, whichever is the lesser. Subject to these limits there is no limit to the number of times that the Indemnity may apply.

## Section 3

### What is covered?

#### **Claims Made under The Halo Guarantee for the Dwelling**

The Indemnity sets aside Halo Guarantees Limited's legal right of subrogation and/or recovery against You, in relation to claim(s) made under the Halo Guarantee at the specified contract location for:

- Defects resulting from product failure/ materials defects.
- Defects caused by sub-trade(s) – where reasonable efforts have been made by the member to have their sub-contractor rectify.

## Section 4

### What is not covered?

The following items are excluded from the Indemnity and We will not provide any indemnity for any situation arising from or in connection with these items:

#### **Any Claim or Defect not Covered Under the Corresponding Halo Guarantee**

The Policy serves as an indemnity against claims covered by the Halo Guarantee for the Specific Dwelling. As such and by definition, if a claim relates to a defect not covered and responded to by the corresponding Halo Guarantee, this Indemnity will not respond.

#### **Workmanship**

The Indemnity will not apply in respect of defective workmanship by You. It only applies in respect to materials, products and subtrades as set out in Section 3.

#### **Defects discovered when building owned by the Builder**

The Indemnity will not apply whilst the building is owned by the Builder or any associated entity of the Builder.

#### **Dishonesty or Fraud**

The Indemnity will not apply to any claim or loss wholly or partly brought about by any dishonest, fraudulent, criminal or malicious act or omission of the Builder unless the Builder can demonstrate that such claim did not arise from a criminal offence except insofar as indemnified by the Dishonesty of Employees Extension, if applicable.

#### **Fines and Penalties**

The Indemnity will not apply to Fines, penalties, or liquidated damages.

## Section 5

### Operation of this Indemnity

Subject to the conditions of this Agreement, your Indemnity will automatically be deemed to apply to any claim made under the corresponding Owner's Halo Guarantee.

#### Further Conditions

In the event a claim is made or intimated under or in relation to the corresponding Owner's Halo Guarantee You must, in addition to complying with all of Your obligations as a Certified Builders member:

- not admit liability for, or settle any claim or incur any costs or expenses or prejudice or compromise Halo's position in connection with the claim
- comply with all of Our reasonable directions, and take reasonable precautions to avoid or minimise the claim
- not undertake any remedial or rectification works without Our written consent, unless such works are necessary to avoid or minimise the claim

#### How We Resolve Claims

If your Indemnity is declined We will notify You of Our reasons for declining in writing.

If We accept Your Indemnity applies, We will notify You in writing that We have waived Our right of recovery against You and discharge You from all liability for costs incurred by Us in settling the Halo Guarantee claim to the property owner.

## Section 6

### General Terms

#### Access to Information

You must provide Us with any information We require to assess a claim or your Indemnity. This includes but is not limited to:

- any settlement or arrangement You have made with the property owner
- payments You have received under the Building Contract
- any written communications with the property owner or their representatives
- any decision, expert opinion or determination made by a referee, arbitrator, adjudicator and/or third party expert

Failure to provide Us with such information within a reasonable timeframe of it being made available to You and being requested by Us, may result in Us rejecting your Indemnity. This is whether or not such claim was previously accepted.

#### Agency

Where external assessors or loss adjusters or other specialists have been appointed by Us as part of an investigation or dispute We may not be bound by comments, recommendations made during the investigations. This extends to any statement of claim, or notifications made to them by You as these should always be made directly to Us.

## **Breach of terms and conditions of Policy**

If You do not promptly comply with any of the terms and conditions of the Indemnity Agreement and such delay or non-compliance prevents Us from efficiently dealing with any matter connected to Your Indemnity, We may revoke the Indemnity. This is the case even if We previously accepted that Indemnity.

## **Cancellation of the Building Contract and This Policy**

This Indemnity is intended to protect You from potential recovery action if a Halo Guarantee claim is made against You and accepted by Us at the contract location specified on the Schedule.

If during the course of the Works either You or the property owner decide that it is better to part company before Practical Completion occurs then the Owner's Halo Guarantee and this corresponding Indemnity will be automatically cancelled.

If either the Builder, or a Receiver, Liquidator, Administrator or Manager of the Builder has validly cancelled the Building Contract, the Guarantee application will be cancelled and this Indemnity will automatically lapse.

In the event of cancellation in these circumstances, We will refund the fee to the person who paid it to Us.

## **Disputes between You and Us**

If You disagree with decisions We make in relation to this Indemnity Agreement, including (but not limited to) a decision to decline the Indemnity, You must notify Us within 10 days of being told of Our decision.

On notification of the dispute both parties must attempt to resolve the dispute in good faith through negotiation. After 10 days, if the dispute has not been resolved by negotiation, the parties may agree to attempt to resolve it by mediation. Mediation will not be compulsory unless both parties agree to it, and that agreement may be revoked by either party at any time up until 7 days before the scheduled date for the mediation. The parties will share the mediator's fees and expenses equally and meet their own costs. If the parties cannot agree on a mediator within 7 days of the agreement to mediate, then either party may request the President or relevant nominating officer of the Arbitrators' & Mediators' Institute of New Zealand Inc ("AMINZ") or of LEADR (NZ) Inc. to select a mediator.

If the dispute has not been resolved within a month of the dispute arising, and there is no agreement to mediate currently in force and being actively pursued, then the dispute will be resolved as follows:

In the event of a dispute about the outcome of a claim:

- by a registered quantity surveyor engaged by Us to decide the value of the claim In the event of any other dispute, by:
- adjudication before a Disputes Tribunal under the Disputes Tribunal Act 1988; or
- arbitration under the Arbitration Act 1996



## Fraudulent Claim Clause

If You make any claim knowing the same to be false or fraudulent, as regards the value or otherwise, this Indemnity Agreement will be cancelled and any benefit under this Indemnity will be forfeited.

## Law and Jurisdiction

This Indemnity Agreement shall be governed by the laws of New Zealand and subject to the exclusive jurisdiction of the courts of New Zealand.

## Limitation on Liability

This Indemnity will not apply if the Works or the Sub-Works (whichever is applicable), in relation to the owner's claim, do not have any required building, resource or similar consents.

If You are in breach of any of Your obligations under the Building Contract, the Indemnity will not apply.

## Notices

Any notice to Us may be delivered to:

- **Halo Guarantees Limited PO Box 13415, Tauranga Central, Tauranga 3141; or**
- **hello@halo.nz**

## Any Notice to The Builder may be delivered to:

The postal and/or email address provided in the Schedule and/or Your membership application.

A notice given by a party is deemed to be received -

- if it is personally delivered, when delivered; or
- if it is posted, 3 working days after posting; or

- if it is sent by fax, on production of a transmission report (by the machine from which the fax was sent) that indicates that the fax was sent in its entirety; or
- if it is sent by email, when the email leaves the communications system of the sender, provided that the sender does not receive any error message relating to the sending of email

## Privacy

You authorise Halo Guarantees Limited and/or its representatives to obtain from any other third party, personal information they consider relevant for the purpose of the Indemnity Agreement.

You authorise Halo Guarantees Limited and/or its representatives to disclose to any other third party, personal information obtained from You or any other third party for any purpose in relation to the Indemnity Agreement.

You have rights to access and can request correction of your personal information. To exercise these rights the You should contact Halo Guarantees Limited on the contact details given on the first page of this document.

## Sanctions

We shall not provide any benefit under this Indemnity Agreement whereby doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

## Waiver

A failure or delay to exercise any of Our rights or remedies under this Indemnity Agreement cannot be taken as a waiver of that right or remedy.

## Section 7

# Definitions

### Approved Builder

A Builder who is a current Business Member of the New Zealand Certified Builders Association Incorporated.

### Builder

The entity named in the Application Form or Indemnity Schedule (whichever is applicable) in its capacity as either head contractor or sub-contractor to the head contractor.

### Building Contract

The contract entered into between the Owner and the Builder for the carrying out of the Works.

### Building Site

The land where the Works will be undertaken, or the Residential Dwelling will be erected.

### Completion Certificate

The certificate sent by Halo Guarantees Limited to the Owner that must be completed and signed by the Owner when the Building Work has achieved Practical Completion.

### Code Compliance Certificate

The certificate issued by the local authority on the completion of the Works that certifies compliance with the Building Code.

### Guarantee

The Halo 10-Year Residential Guarantee provided in the terms and conditions of this document.

### Owner

The person for whom, or entity for which, the Works are being carried out under the Building Contract and named in the Application form or Policy Schedule (whichever is applicable), and any subsequent owner of the property whose name is registered on the certificate of title to the property on which the Works are carried out.

### Indemnity Schedule

The document provided to You which outlines the specific details of the Indemnity provided under this Agreement.

### Practical Completion

The point in time, and the stage in the progression of the Works, when the Works are so far advanced that the Residential Dwelling can effectively be used by the Owner for its intended purpose, notwithstanding that certain non-critical or aesthetic features are yet to be completed or minor omissions or defects are yet to be rectified.

### Practical Completion Date

The date of Practical Completion as notified by You on the signed Completion Certificate, or, if the default provisions outlined in Section 4 of the Halo Guarantee apply, then the default Practical Completion Date as selected by Us.

### Remedial Period

The timeframe set by Us during which the Builder should carry out all remedial work required to fix the defect which is the subject of a claim that has been accepted by Us.

## Residential Dwelling

- A building or part of a building that is used or intended to be used mainly for residential purposes, includes detached standalone buildings used in association with residential purposes, but excludes any building or part of a building in excess of (3) three stories, excluding any basement, unless agreed otherwise, in writing by Us.
- Any private services (water, gas, electricity, or sewage) associated with the Building Work, but excludes septic tank systems or septic farms, or solar or wind electrical generating systems.

## Structural Defect

Structural Defect means a defect in or damage to:

- the foundation systems and footings; and/or
- beams, girders, lintels, and columns; and/or
- load bearing walls and partitions; and/or
- roof framing and floor systems
- Decks and decking as defined

## Structural Defect Guarantee Period

The period commencing from the Practical Completion Date and ending 10 years after that date.

## Workmanship and Materials Defect

Building work or materials that have either failed and/ or do not comply with the New Zealand Building Code and/or the New Zealand Standards applicable at the time of the Practical Completion Date. It includes that the item is not fit for its intended use and/or does not fall within the tolerances as set out in the Guide to Acceptable Tolerances applicable at the Practical Completion Date.

## We, Us, Our

Halo Guarantees Limited.

## Work(s)

The workmanship and materials to be provided by the Builder (and/or the Builder's subcontractors and suppliers) as described in the Building Contract and (if applicable) the relevant Building Consent, in connection with a Residential Dwelling and includes decks only if they are connected to or part of the primary structure.

## You, Your, Yourself

The Approved Builder who is named on the Indemnity Schedule.

Builder who is named on the Indemnity Schedule.



**Halo Guarantees Limited**  
PO Box 13415  
Tauranga Central | Tauranga 3141

**hello@halo.nz**  
**0800 141 490**