

# Flickguard™ \$250,000 PREMIUM WARRANTY – CONDITIONS

Subject to the following terms, limitations, conditions and exclusions, Ensystex Australia Pty Ltd, ABN 92 096 839 815, Unit 3 The Junction Estate, 4-6 Junction Street, AUBURN, NSW 2144 (Ensystex) warrants the performance of the Flickguard Termite Protection System installed at the Covered Property.

Your rights under this warranty are in addition to and are not intended in any way to detract from, or limit, any rights you have under Australian Consumer Law, or any other applicable laws.

## WARRANTY

The Warranty only covers control of infestations of certain types of termites (Subterranean Termites) and repair of their damage to the structure which is the result of the failure of a conforming installation of Flickguard to stop their attack, referred to as Compliant Damage. Not all termite infestations against, or termite damage to, the Covered Property are covered by this Warranty.

### **Subterranean Termite Damage Repair**

During the Warranty Period, Ensystex agrees to be responsible for Loss that is caused by Subterranean Termites that **Breach (penetrate) or Bridge\*** a properly installed, intact, undiminished, unmodified and undamaged Flickguard component that was correctly installed in the Covered Property by an approved Flickguard Installer. \*IMPORTANT – read Definitions.

The total liability of Ensystex for Loss to a Covered Property during the Warranty Period shall not exceed in the aggregate **\$250,000.00 (including GST)**.

The Warranty only covers certain Subterranean Termite damage discovered and notified to Ensystex during the Warranty Period, referred to as Compliant Damage.

## WARRANTY PERIOD

The Warranty is effective only during the Warranty Period. Annual Inspections and payments must be made to extend the Warranty Period beyond the Warranty Inception Date.

The Warranty Period shall begin on the Warranty Inception Date and shall continue for a minimum of one-year. The Warranty Period shall be automatically extended on the first and each subsequent, consecutive anniversary of the Warranty Inception Date for another one-year, provided that a Qualified Inspection of the Covered Property for the presence of Subterranean Termites, performed at the Property Owner's expense, has been performed since the last (immediately prior) anniversary of the Warranty Inception Date (or since the Warranty Inception Date in the case of the first extension of the Warranty Period) and a payment of a Warranty Extension Fee has been made to Ensystex during the same time period.

The Warranty Period may, upon the performance of the required annual Qualified Inspections, be extended for further one-year periods.

## WARRANTY PERIOD EXPIRATION AND TERMINATION

The Warranty Period will not be extended, and the Warranty will be terminated if all Qualified Inspections required according to the Warranty Period section of this Warranty are not performed when and to the extent required. This Warranty shall be

terminated automatically and without notice to the Property Owner on the first anniversary of the Warranty Inception Date that occurs without a Qualified Inspection of the Covered Property having been performed since the last Warranty Inception Date anniversary.

Additionally, the Warranty Period will be automatically terminated if any Annual Warranty Extension Fee is not paid when due. This Warranty shall be terminated automatically and without notice to the Property Owner on the first anniversary of the Warranty Inception Date that occurs without an Annual Warranty Fee having been made since the last Warranty Inception Date anniversary.

All of Ensystex's obligations according to this Warranty shall be terminated upon the termination of the Warranty.

## REQUIRED ANNUAL QUALIFIED INSPECTIONS

Inspections of the Covered Property for the presence of Subterranean Termites shall be considered to be Qualified Inspections only if they are performed according to the inspection frequency requirement imposed in the Warranty Period section of this Warranty and only when they are performed by the Approved Flickguard Installer who installed the Flickguard System in the Covered Property (unless said Installer ceases to trade or to be accredited to install Flickguard in which case an alternate Approved Flickguard Installer appointed and accredited by Ensystex may be employed).

Inspections shall be performed in accordance with the recommendations contained in the then current Australian Standard *AS 3660 Termite management – Part 2, In and around existing buildings and structures* or Australian Standard *AS 4349 - Inspection of Buildings - Part 3, Timber pest inspections* or other Australian Standards with respect to Timber Pest Inspections in force on the date of the inspection(s). The results of such inspection must be reduced to writing by the inspector and such report must be retained by the Property Owner as proof of the thoroughness and timing of the inspection(s).

At the time of a claim of Loss the Property Owner must, upon such request by Ensystex, present written evidence satisfactory to Ensystex that all of the Qualified Inspections of the Covered Property required according to the terms of this Warranty have been performed on the Covered Property when and to the extent required. Failure of Property Owner to present evidence satisfactory to Ensystex that all required Qualified Inspections have been made when and to the extent required may result in denial of the claim by Ensystex and automatic cancellation of this Warranty.

## NON-COMPLIANT DAMAGE

Flickguard components are effective at deterring Subterranean Termite attacks against the Covered Property only if they are installed properly and are intact, undisrupted, undiminished, unmodified and undamaged at any time at which they are under attack by termites attempting to penetrate or breach them. Ensystex shall not be responsible for the repair of damage to the Covered Property caused by Subterranean Termites that breach or otherwise penetrate an improperly installed, disrupted,

diminished, modified and/or damaged Flickguard component or a Flickguard component installed by anyone other than an approved Flickguard Installer. Such damage is not Compliant Damage and is not the responsibility of Ensystem to repair.

Based on circumstances that may be present or events that may occur in the Covered Property during the Warranty Period that are beyond the control of Ensystem, termites may be able to bridge, circumvent or otherwise avoid a Flickguard component and enter and attack the Covered Property without having to breach or penetrate a Flickguard component. Such unimpeded entry can occur if termites are able to bridge across, around or over Flickguard or if they are able to enter the structure at an opening in the foundation that is, for whatever reason, unprotected by Flickguard. Depending on the circumstances, Ensystem MAY be responsible for the repair of Subterranean Termite damage, caused by termites entering the Covered Property under such circumstances. See Definitions for Bridging.

However, Ensystem shall not be responsible for the repair of any termite damage that occurs as a consequence of a failure of the concrete slab when it has been designed and installed as a pre-construction termite protection system as outlined in Australian Standard AS 3660.1 *Termite management – New buildings*.

Ensystem shall not be responsible for the repair of damage caused by termites entering the structure at an opening that is, for whatever reason, unprotected by Flickguard.

### **NO OTHER WARRANTIES**

No other warranties, representations or other terms and conditions of any nature not expressly contained in this Warranty shall have any force unless they have been reduced to writing and signed by all parties and are expressed to be a modification of this Warranty. This clause does not exclude statutory warranties or conditions.

### **PROPERTY OWNER'S RESPONSIBILITIES**

#### ***The Property Owner must:***

1. not damage, remove, modify, tamper or interfere with any Flickguard component.
2. act with the utmost good faith in the event of a Loss or in filing a claim for Loss. If the Property Owner lodges a fraudulent claim or provides false or misleading information, Ensystem may cancel the Warranty and/or deny responsibility.
3. Immediately (within 14 days) notify Ensystem in writing if termites or termite damage are found in the Covered Property.
4. have all Qualified Inspections performed, at their expense, according to the terms contained in the Required Annual Qualified Inspections Section of this Warranty.
5. not allow or fail to prevent the accumulation of wood, rubbish or timber against the exterior of the Covered Property.
6. not allow the Flickguard system dividing the soil surface from the Covered Property to be bridged or broken by any material or matter through or over which termites may by-pass a Flickguard component and enter the Covered Property.
7. not allow the finished ground level against the exterior of the Covered Property to, at any point, exceed in height the level of the lowest Flickguard component in the Covered Property opposite that point.
8. perform or have performed as soon as possible all remedial actions recommended by the Approved Flickguard Installer in any Termite Inspection Report and control any termites found on the site, in order to reduce the chances of attack by Subterranean Termites against the Covered Property.

### **EXCLUSIONS**

#### ***No cover under this Warranty shall be provided in respect of:***

1. the repair of any Subterranean Termite Damage discovered or reported after the termination or expiration of the Warranty.
2. consequential or indirect loss or loss of any nature except as specified herein. Ensystem will not pay or compensate the Property Owner and Ensystem hereby disclaims any responsibility for devaluation of the Covered Property, stress, loss of sleep, anxiety, alternative accommodation or loss of income.
3. any Loss associated with Betterment.
4. costs of the treatment of the termite infestation arising in the grounds of the property.
5. any Loss on account of alterations, additions or modifications to the Covered Property that disrupt, diminish, modify or damage a Flickguard component.
6. damage occurring to chattels of any nature including, but not limited to, antiques, artwork, heirlooms, paintings, carpets, floor coverings, furniture, personal property or stored materials.
7. damage to fences, gates, poles, bridges, wharves, jetties, landscaping timbers, garden structures or pergolas.
8. damage to buildings connected to or additions to the Covered Property that are not protected by Flickguard.
9. damage to the Covered Property if any Flickguard component protecting the Covered Property was installed by any person or entity other than an approved Flickguard Installer.

### **OTHER CONDITIONS**

Control of termites that bridge or breach a Flickguard component and that are the responsibility of Ensystem to control shall be controlled according to the method of control chosen by Ensystem.

All repair, remediation and replacement of Compliant Damage performed according to and/or on account of this Warranty shall be performed at the direction and expense of Ensystem. Ensystem shall not be responsible for reimbursement or other compensation for the repair, remediation or replacement of Compliant Damage when the repair, remediation or replacement is performed or otherwise arranged for by the Property Owner or some other third party (including an approved Flickguard Installer) not working under the authority and direction of Ensystem, unless prior to performance of such repair, remediation or replacement, written authorisation for such repair, remediation or replacement was received from Ensystem.

The responsibility of Ensystem to perform repairs to the Covered Property shall be limited in scope to the repair, remediation or replacement of components of the Covered Property that Ensystem deems necessary to correct or remedy the effects on the Covered Property of any Compliant Damage.

The valuation of Loss shall be computed from the following formula. Loss = cost of the materials and labour (at prevailing local per hour wage rates) deemed necessary by Ensystem to correct or remedy the effects of the Compliant Damage plus applicable taxes, permits and insurance plus twenty-five per cent for overhead.

During the inspection and authentication of any Compliant Damage to the Covered Property, Ensystem will not be responsible for creating openings to and/or dismantling any part

of the Covered Property directly upon which no visible evidence of Compliant Damage is found by Ensystex.

Any repairs by Ensystex to the Covered Property will be performed to match, as close as reasonably possible, the existing fit, finish and appearance of the damaged area of the Covered Property. If any part or component of an item of decor (e.g. paint, tile, flooring, wallpaper, panelling, moulding, trim, siding, roofing brick, finishes, etc.) of the Covered Property sustains Compliant Damage or is damaged during the repair of Compliant Damage, Ensystex will make a reasonable effort during repair or replacement of this part or component of this item of decor to match it to existing, similar, undamaged parts or components of this item of decor. However, Ensystex will not be responsible for repairing and/or replacing undamaged parts or components of the item of decor in order that they exactly and indistinguishably match parts or components of the item repaired or replaced.

During the performance of repairs, Ensystex, in lieu of removing and replacing any damaged component of the Covered Property, can instead, at its option, reinforce and/or reconstruct the component or part of the Covered Property containing the component in such a way that the structural purpose of the component is preserved, supplemented or transferred to another component, existing or installed by Ensystex, provided that the area of the Covered Property that contains such component shall have an appearance after repair, when viewed from the exterior or interior living spaces of the Covered Property, similar to its appearance before it was damaged.

## **DISPUTE RESOLUTION**

Any dispute under, or arising out of, this Warranty shall be referred to the Institute of Arbitrators & Mediators Australia, for resolution. Each case will first be referred to a Conciliator appointed by the Institute unless either party wishes to proceed directly to arbitration. If the conciliation is not satisfactorily concluded within six weeks or if the parties want to proceed directly to arbitration, the Institute will appoint an Arbitrator who will make a final and binding award.

## **DEFINITIONS**

**Annual Warranty Fee** means the fee required to be paid to Ensystex each year for the provision of this Premium Warranty.

**Approved Flickguard Installer** means a person or entity who has within the last year been accredited or reaccredited by Ensystex to install Flickguard and to offer this Warranty.

**Betterment** means that part of any Loss associated with the use of materials of superior quality to those used in the construction of the Covered Property.

**Breach/ Bridge** The Warranty only covers damage caused by termites when termites Breach or Bridge, as defined below, a properly installed, intact, undiminished, unmodified and undamaged Flickguard component that was correctly installed in the Covered Property by an approved Flickguard Installer.

**Breach** The Warranty covers termite damage caused by termites Breaching the Flickguard Termite Management System to gain access to a structure. This is where the termites pass through a correctly installed Flickguard Termite Management System component. Termite access to the property MUST occur because the termites actually penetrated through the correctly installed Flickguard Termite Management System.

**Bridge** The Warranty covers termite damage caused by termites Bridging the Flickguard Termite Management System to gain

access to a structure. This is where the termites pass over or around a correctly installed Flickguard System component.

However, Termite access to the property MUST occur in the immediate proximity of the correctly installed Flickguard Termite Management System. This means the termite activity/workings MUST touch the Flickguard component.

**Compliant Damage** means Subterranean Termite Damage to the Covered Property caused by Subterranean Termites that, according to the terms of this Warranty, is the responsibility of Ensystex to repair, remediate or replace. Compliant Damage is damage caused or created by Subterranean Termites that breach or bridge a properly installed, intact, undiminished, unmodified and undamaged Flickguard component. Any other damage is Non-Compliant Damage and is not the responsibility of Ensystex to repair, remediate or replace.

**Covered Property** means the residential or commercial building(s) specifically identified in this Warranty as being protected by Flickguard. Additions made to the Covered Property within which Flickguard is not installed by an approved Flickguard Installer are not covered by this Warranty.

**Loss** means all costs and expense incurred to repair, remediate or replace Compliant Damage. According to this Warranty, Ensystex may not be responsible for paying to repair, remediate or replace all Loss that occurs to the Covered Property.

**Non-Compliant Damage** means Subterranean Termite Damage to the Covered Property that, according to the terms of this Warranty, is not the responsibility of Ensystex to repair, remediate or replace. Non-Compliant Damage includes any damage not classified as Compliant Damage.

**Property Owner** means the holder of the Warranty including successors in title.

**Subterranean Termites** means termites of the families Rhinotermitidae and Termitidae, which require soil contact or a continuous supply of moisture and are regarded as the group of termites most damaging to buildings.

**Subterranean Termite Damage** means Subterranean Termite consumption of **Timber** that impairs the integrity of structural and/or internal Timber(s).

**Timber** means the wood or wood derived products used in the structural framing and fittings of the Covered Property.

**Flickguard Termite Protection System or Flickguard** means the Flickguard components correctly installed in the Covered Property by an approved Flickguard Installer.

**Warranty Inception Date** means the date on which the Warranty took effect on the Covered Property. The Flickguard Warranty Activation Form supplied as part of the 'Flickguard handover kit' for the Covered Property should first be completed and forwarded to the Approved Flickguard Installer who installed the Flickguard System in the Covered Property.

**Warranty Period** means the period beginning on the Warranty Inception Date and ending on the date of Warranty termination.

**Our goods come with guarantees that cannot be excluded under Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.**