



**VICTORIAN  
PLUMBERS  
LIABILITY POLICY**

WESFARMERS GENERAL  
INSURANCE LIMITED  
ABN 24 000 036 279

**New South Wales**

Lumley House  
Level 9, 309 Kent Street  
Sydney NSW 2000  
Phone (02) 9248 1111  
Fax (02) 9248 1122

50 Glebe Road  
The Junction  
Newcastle NSW 2291  
Phone (02) 4925 7500  
Fax (02) 4940 0295

**Victoria**

Level 3, 99 King Street  
Melbourne VIC 3000  
Phone (03) 8627 4333  
Fax (03) 8627 4312

**Australian Capital**

**Territory**  
Level 4, 10 Rudd Street  
Canberra City ACT 2601  
Phone (02) 6279 0333  
Fax (02) 6279 0330

**Tasmania**

Level 11, 27 Paterson  
Street Launceston TAS  
7250 Phone (03) 6331  
5844 Fax (03) 6331  
1370

**South Australia**

465 Pulteney St  
Adelaide SA 5000  
Phone (08) 8228 1700  
Fax (08) 8228 1777

**Western Australia**

50 St George's Terrace  
Perth WA 6000  
Phone (08) 9220 8222  
Fax (08) 9220 8251

**Queensland**

Level 2, 99 Melbourne St  
South Brisbane 4101  
Phone (07) 3231 4800  
Fax (07) 3231 4899

Level 5, Northtown Tower  
Flinders Mall

Townsville QLD 4810  
Phone (07) 4722 6000  
Fax (07) 4724 4398

**Northern Territory**

Level 2, Beagle House  
38 Mitchell Street  
Darwin 0800  
Phone (08) 8946 4600  
Fax (08) 8946 4666



# VICTORIAN PLUMBERS LIABILITY POLICY

## Important Information

To determine if this insurance is appropriate for You, it is important that You read:

- This *Important Information* Section – this Section contains information on important matters You need to be aware of before applying for this insurance, such as Your Duty of Disclosure.
- The *General Policy Exclusions* Section – this Section sets out what We do not cover;
- The *General Policy Conditions* Section – this Section contains details of Your and Our rights and obligations under this insurance, including information on making a claim and what excesses may be payable. If You breach a condition or warranty under this Policy, We may be able to cancel the insurance or reduce Our liability in respect of a claim to the extent permitted by law;
- The wording of the specific Policy Sections You have selected – these set out the specific cover, exclusions and conditions that apply to each Section; and
- Any other documents We provide to You about the insurance which may change the standard cover.

This policy makes provision for payment of Goods and Services Tax by You in relation to premiums and by Us in relation to claims.

If You have any questions regarding the policy, please contact Your insurance broker.

Plans, documents, reports, contracts, receipts, manuals and serial numbers relating to Your property should be kept. If a claim occurs the documents may be required by Us and they will assist You in completing Your claim form.

Capital letters have been used at the beginning of words to identify defined terms throughout the policy.

## **Applying for Cover**

When You apply for this insurance, You will need to complete a proposal form. We will use the information supplied on that form to decide the terms of cover We will provide. We provide cover to You on the terms contained in this document, the proposal and any other document, including the most recent Schedule that We issue to You.

The Schedule will contain important information relevant to Your insurance including the Period of Insurance, Your Premium, details of Your Cover, the Excess(es) that will apply to You and others and whether any standard terms have been varied by way of endorsement.

All of these make up Your Policy with Us. You need to keep these documents in a safe place together with receipts and other evidence of ownership and value of items You insure.

Before expiry, We will send You a renewal notice which tells You whether We will renew this insurance and on what terms.

## **Who is insured under the policy**

The persons or organisations covered by the policy are shown in the current schedule. The policy also extends to cover any subsidiary company, incorporated within Australia, its mandated territories or protectorates, whose business is similar to Yours, formed or acquired during the period of cover, employee social and sporting clubs or welfare organisations (including their office bearers and members while acting in these capacities) formed with the consent of a person or organisation named in the Schedule and the trustees of any employee superannuation and pension funds which are not administered by corporate fund managers. In the policy, those persons or organizations are referred to as You or Your.

## **Cooling Off Rights**

Even after You make a decision to purchase this insurance, You still have cooling off rights. You can return Your insurance by notifying Us in writing within 21 days of cover commencing and We will refund the Premium paid unless something has occurred for which a claim may be payable. Even after this cooling off period ends You still have cancellation rights (See General Conditions).

## **Confirming Transactions**

You may contact Us in writing or by phone to confirm any transaction under Your insurance if You or Your advisor do not already have the required Policy confirmation details.

## **Your Responsibilities Duty of Disclosure**

Before You enter into a contract of general insurance with an insurer, You have a duty under the Insurance Contracts Act 1984 to disclose to Us every matter You know, or a reasonable person in the circumstances could be expected to know, is relevant to Our decision whether to accept the risk of the insurance and if so, on what terms. The Act imposes a different duty the first time You enter into Your Policy with Us, to that which applies when You renew, vary, extend or replace it.

### **Your Duty of Disclosure when You enter into Your Policy with Us for the first time**

We will ask You various questions when You first apply for Your Policy that are relevant to Our decision whether to accept the risk of insurance and, if so, on what terms. When You answer those questions, You must:

- give Us honest and complete answers;
- tell Us everything You know which may be relevant to Our decision to insure You
- and if so, on what terms; and
- tell Us everything that a reasonable person in the circumstances could be expected to know.

### **Your Duty of Disclosure when You renew, vary, extend, reinstate or replace Your Policy**

When You renew, extend, vary or reinstate Your Policy with Us, Your duty is to disclose to Us before the renewal, extension, variation or reinstatement, every matter that You know, or a reasonable person in the circumstances could be expected to know, is relevant to Our decision whether to accept the risk of the insurance and if so, on what terms.

### **What You do not need to tell Us**

Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by Us;
- that is of common knowledge;
- that We know or, in the ordinary course of business, ought to know;
- as to which compliance with Your duty is waived by Us.

*Who does the Duty of Disclosure apply to?*

The duty of disclosure applies to You and everyone that is an Insured under this contract of insurance.

*What happens if You or they do not comply with the Duty of Disclosure?*

If You, or they, fail to comply with the duty of disclosure, We may be entitled to reduce Our liability under Your Policy in respect of a claim or cancel it. If the non-disclosure is fraudulent, We may treat Your Policy as if it was never effected.

### **Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice, which is a self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry. We have adopted and endorse the Code. If You want details please contact Us.

### **How to Make a Claim**

The General Conditions Section tells You what You need to do to make a claim under this Policy. Before We pay any claim, We will require reasonable evidence as to the extent of loss or damage. Please ensure that, where possible, You keep any photographs or other documentation in respect of loss or damage to make the process as easy as possible.

Any claim settlements, up to the total of all amounts insured, will exclude GST. However, if there is a shortfall between the GST component of Your claim and the amount of tax credit You are entitled to, We will pay this shortfall in addition to the claim settlement.

## **Complaints – Internal and External Complaints Procedure**

If You have a complaint, please write to Us and explain what Your complaint is and the reasons behind it.

We will then either resolve or attempt to resolve Your complaint immediately or refer the matter to Our Internal Disputes Resolution Committee (IDRC) if it is unresolved.

If You are not satisfied with the decision of the IDRC, You may be able to access the services of an independent external dispute resolution body called "Financial Ombudsman Service (FOS)".

If You require any further information about Our dispute resolution process, please contact Us.

## **Privacy**

We are bound by the National Privacy Principles under the Privacy Act 1988 (Cth) Code when We collect and Handle Your personal information. We collect personal information for the purpose of providing insurance, including arranging insurance, policy administration and claims handling. We also collect Your personal information to conduct market or customer satisfaction research and to develop and identify products and services that may interest You.

We disclose personal information to persons We deal with in providing Our services to You, for example, reinsurers, insurance intermediaries, insurance reference bureaus, credit reference agencies, Our and Your advisors and those involved in the claims handling process, for the purpose of assisting Us and them in providing relevant services and products, and for the purpose of litigation. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it. By providing Your personal information to Us or Our agent, You consent to Us making these disclosures.

Without this information, We may not be able to provide You with the service that You require.

When You give Us personal information about other individuals, We rely on You to have made or make them aware that You will or may provide their information to Us and the types of third parties We may provide it to, the relevant purposes We and the third parties will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant information.

If You would like a copy of Our Privacy Policy, would like to seek access to or correct Your personal information, or opt out of receiving materials We send, please contact Us.

## **Our maximum liability**

Except as otherwise stated elsewhere in this policy, the maximum amount We will pay will not exceed the amount stated as the sum insured or the limit of liability for those Sections selected.

## **Other persons or organisations requiring cover**

You must inform Us of all persons or organisations to be covered by the policy. We will cover them if You have advised Us of them and We have shown them on the current schedule or included them in the policy wording.

## **All persons or organisations are bound by the policy**

All persons or organisations covered by the policy have to comply with the terms and conditions of the policy. We may refuse to pay a claim if You or any person covered by the policy do not comply with the terms and conditions of the policy.

### **Who is the insurer**

The insurer is Wesfarmers General Insurance Limited, ABN 24 0000 036 279, trading as Lumley Insurance. In this policy, Lumley Insurance is referred to as We, Us and Our.

### **Duties of insurer**

We will act and conduct ourselves with utmost good faith in all Our dealings with You.

### **When you are Covered**

Your cover commences when We have accepted Your proposal. We will then send You the current schedule. The current schedule sets out who is insured, the covers You have selected, the Period Of Cover, the limits of liability, excesses and other important information. Before We pay or agree to pay any claims You must have paid or agreed to pay Us the premium.

## **General Policy Exclusions**

### **Nuclear Exclusion**

We will not pay for any loss, liability, injury, illness or property damage caused directly or indirectly by or arising from nuclear weapons material, ionising radiations or contamination by radioactivity from any nuclear fuel or from nuclear waste from the combustion of nuclear fuel. For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission.

### **Business in liquidation or ceases to trade**

If Your business is deregistered, placed into liquidation or administration, a receiver is appointed or the business is wound up or is permanently discontinued, then unless otherwise agreed by Us in writing, all cover under this policy ceases from the time Your interest is transferred or Your business ceases to trade.

### **Geographical limitations**

Unless We agree in writing to the contrary, We will not pay for any loss or damage to Your Business Property that is outside the Commonwealth of Australia at the time of its loss or damage, except as specifically stated otherwise in the appropriate Section.

### **Wilful Acts**

Subject to the provisions of the Insurance Contracts Act 1984, We will not pay for any loss or damage caused by either Your wilful act or by the wilful act of another party committed with Your knowledge and consent and which You were capable of preventing.

### **Except as provided otherwise this policy does not cover:**

- (a) Consequential loss**  
consequential loss of any kind;
  
- (b) Known defects**  
damage caused by faults or defects known to You or any employee whose knowledge in law would be deemed to be Yours and not disclosed to Us at the time this insurance was arranged.

## **War and Terrorism**

This Policy does not insure death, injury, illness, loss, damage, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any of the following regardless of any other contributing cause or event:

- a) war, invasion, acts of foreign enemies hostilities or warlike 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; or
- b) any act of Terrorism. For the purpose of this Exclusion, Terrorism means an act including but limited to the use or threat of force or violence by any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is committed for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public in fear.

## **Electronic Data Exclusion**

This Policy does not insure loss or damage caused by:

- (a) the corruption or destruction of data, coding program or software, or
- (b) the unavailability of data and/or malfunction of hardware, software and/or embedded chips, or
- (c) any business interruption losses resulting therefrom.

Provided that this Exclusion shall not apply where such loss or damage occurs as a direct result of physical damage which is otherwise insured by this Policy.

## **General Policy Conditions Applicable to all Sections**

Breach of a condition or warranty without Your knowledge or consent or error in name, description or situation of property will not prejudice Your rights under this policy provided notice in writing is given to Us when such breach or error comes to Your knowledge. Reasonable extra premium shall be paid if required, from the date of such breach or error.

## **Authorship**

The policy wording, including all attachments by way of schedules, endorsements or otherwise, shall be construed at all times as having been drawn up solely by Us.

## **Cancellation**

- (a) You may cancel the policy at any time by writing to Us. We will refund the unused proportion of Your premium.
- (b) We may cancel this policy in any circumstances set out in the Insurance Contracts Act 1984.
- (c) After cancellation by You, a pro-rata premium refund will be allowed based on 80 per cent of the premium for the unexpired part of the Period of Cover.
- (d) After cancellation by Us, a premium refund will be allowed in proportion to the unexpired part of the Period of Cover.
- (e) When the premium is subject to adjustment, cancellation will not effect Your obligation to supply Us such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

(f) We agree that the cancellation of this policy:

- (1) Will only take effect thirty (30) days after We give both the Plumbing Industry Commission and You notice in writing of the cancellation, and
- (2) has no effect on any of Our obligation under Consumer Protection Liability section of this Policy with respect to Defects Liability, Trade Practices Liability or the liabilities referred to in clause 14.3 of Consumer Protection Liability section of this Policy in relation to Plumbing work that was carried out while this policy was in force, and
- (3) has no effect on any of Our obligation under Public and Products Liability section of this policy with respect to Your liabilities in respect of Personal Injury or Property Damage that happened while this policy was in force.

Our notice of cancellation shall not be less than thirty (30) days and can be delivered personally or posted to Your address on the current schedule. Cancellation becomes effective at the time shown on the notice of cancellation or when You have insured with another company, whichever occurs first.

### **Changes**

Before You renew Your policy, You must advise Us as soon as practicable of any fact or event known to your officer responsible for insurance which materially affects the risks insured by Us, including:

- 1) a change of Your address;
- 2) criminal convictions of a member of Your Family, You or other persons who normally reside with you
- 3) accidents
- 4) a modification affecting performance or the value of property insured;
- 5) a change of Your business;
- 6) a change of insurable interest, whether by will or at law;

### **Excess**

If more than one excess can be applied to one Occurrence, then You will only need to pay the highest excess.

### **Goods and Services Tax**

Where We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You are, or will be, or would have been entitled to under *A New Tax System (Goods and Services Tax) Act 1999*, in relation to that acquisition, whether or not that acquisition is actually made.

Where We make a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to under *A New Tax System (Goods and Services Tax) Act 1999* had the payment been applied to acquire such goods, services or other supply.

### **Inspections**

We (or agents appointed by Us) have the right to inspect and examine, by mutual appointment, any business property insured.

## **Jurisdiction**

All disputes arising out of or under this policy shall be subject to determination by any court of competent jurisdiction within Australia according to the law which applies to that jurisdiction.

## **Other Persons or Organisations**

If any person or entity shall have any interest in the business property, We shall protect that interest in the event of a claim, provided that that interest is disclosed in Your business records and You shall have disclosed the nature and extent of that interest to Us at the time of notification of the claim.

Where the separate interests of more than one party in the business property are insured under this policy, any act or neglect of one party will not prejudice the rights of the remaining party or parties provided that the remaining party/ies shall, within a reasonable time after becoming aware of any act or neglect whereby the risk of loss, damage or destruction has increased, give notice in writing to Us and shall on demand pay such reasonable additional premium as We may require.

You cannot transfer the policy into someone else's name without Our written consent. All persons entitled to claim under the policy are bound by the terms and conditions of the policy.

When a claim is paid under the policy and is also recoverable under another policy or policies, You agree to permit Us to seek contribution from the other insurer or insurers.

## **Progress payments**

We will not unreasonably withhold progress payments. We will make progress payments on claims at intervals to be agreed by Us following receipt of an interim report from Our loss adjuster or representative.

## **Reasonable Care**

You must take reasonable precautions to prevent personal injury or property damage as if You were not covered by this policy such as:

- 1) if You discover that Your products may be defective and the defect may cause a claim under the Public and Products Liability Cover Section, at Your expense You must take reasonable steps to restrict, trace, recall, modify, replace or repair the products;
- 2) maintain and look after other person's or organisation's property and buildings used or occupied by You, in accordance with Your agreement with them;
- 3) if Your occupation includes digging below ground at sites away from Your business premises You must obtain the location of underground services from the owners of the services.
- 4) use and store all hazardous materials as required by law.

If You do not take reasonable precautions We may refuse to pay part or all of Your claim.

## **Our rights of conduct and recovery**

Subject to the provisions of the Insurance Contracts Act 1984, We have the right to recover or obtain contribution from any person against whom You may be able to claim and the right to take action in Your name. We shall have full discretion in the conduct, defence or settlement of any claim. You and any other person entitled to benefit under this policy must not hinder these rights and must give all such information and cooperation as We may require.

Recoveries, whether effected by Us or by You, shall be applied, net of the expense of such recovery, first to the satisfaction of Your loss in excess of the claim paid under this policy (disregarding the amount of any excess applicable), secondly to Us as reimbursement of the amount(s) paid in settlement of Your claim and thirdly to You in satisfaction of the amount of any excess applicable.

## **Claims**

### **What You must do after loss, damage or accident**

- 1) Protect yourself from any danger present.
- 2) Assist other people within Your capabilities if required.
- 3) Take reasonable steps to prevent further loss, damage or liability.
- 4) Notify the police immediately if any of Your property is lost, stolen, or maliciously damaged and provide the police with all assistance to apprehend the offending party. Advise Us of the claim as soon as practicable and then supply Us with full written details by completing Our claim form. You or someone acting on Your behalf must complete a claim form within a reasonable time of an occurrence. If You do not, We may reduce the amount We pay if the delay causes increased costs or prevents Us investigating the claim.
- 5) Any invoices, bills, demands letters or notices You receive from other people involved in the loss, damage or accident must be sent to Us as soon as possible.

### **What you must not do after a loss or accident**

- 1) You must not admit fault or agree to pay for damage without Our consent. Do not make an offer, settle, or attempt to settle any claim against You. If You do We may not pay all or part of the claim.
- 2) You must not incur any costs or expenses or authorise repairs (other than necessary temporary repairs) without Our agreement.

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## SECTION 1 – PUBLIC & PRODUCTS LIABILITY

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### Words with special meaning

Wherever the following words appear in the Public and Products Liability Cover Section, they have the following special meaning.

**“Aircraft”** means any machine designed to fly, glide, move on a cushion of air or move through the air.

**“Business Premises”** means the buildings, outbuildings, yards and land used by You for Your business at the Situation.

**“Compensation”** means compensatory damages, all legal costs awarded against You and interest accruing after entry of judgement against You until We have paid the amount outstanding.

**“Employee”** means any person who is employed by You and/or in respect of whom You are required to have cover for workers compensation or similar cover by any workers compensation legislation.

**“Employment Practices”** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of employment by You.

**“Excess”** means the amount, or the loss applicable to a specified period of time, expressed as an excess on the current schedule or elsewhere in the policy. This is the first amount of any loss that You must pay before We will pay Your claim. The Excess applies after any necessary adjustment for wear and tear, depreciation, sub-limits or underinsurance.

**“Geographical Limit”** means;

1. anywhere within the Commonwealth of Australia and its external territories;
2. elsewhere in the world but only:
  - a. arising from the presence outside Australia of any travelling executives, Non-Manual Salesmen or other non-manual Employees who are normally resident in Australia;
  - b. any part of the world to which Your Products are exported except Products You know have been exported to the United States of America or the Dominion of Canada or any country, territory or protectorate where the laws of these countries are applied.

**“Hovercraft”** means any vessel, craft or device made or intended to float on or in travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**“Limit Of Liability”** means the amount(s) stated in the current schedule as the sum insured or any lesser limit shown in the current schedule or in this Section. The Limit Of Liability is inclusive of and not additional to any applicable Excess.

**“Ministerial Order”** means the Licensed Plumbers General Order 2002 made under Sections 221ZQ and 221ZT of the Victorian Building Act 1993 effective 15<sup>th</sup> July 2002.

**“Non-Manual Salesmen”** means Your agents, servants or Employees who are involved solely in the marketing of Your Products but does not mean any such person who undertakes the manufacturing, maintenance or repair of Your Products whether or not such activities are incidental to marketing of Your Products.

**“Occurrence”** means an event including continuous or repeated exposure to substantially the same general conditions, which results in personal injury or property damage which You neither expected nor intended to happen. All personal injury or damage to property resulting from one original cause will be treated as being caused by the one occurrence.

**“Personal Injury”** means:

1. bodily injury, sickness, disease, disablement, loss of consortium, shock, fright, mental anguish and mental injury, including death at any time resulting from any of these;
2. wrongful entry, wrongful eviction, false arrest, wrongful detention, false imprisonment, malicious prosecution and humiliation;
3. assault, provided You did not commit the assault or direct the assault unless reasonably committed for the purpose of preventing Personal Injury or Property Damage;
4. libel, slander, defamation of character;
5. invasion of right of privacy;

which occurs during the Period Of Cover.

**“Pollutants”** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals, material to be recycled, reconditioned or reclaimed or wastes.

**“Products”** means anything after it is no longer in Your possession or control that You manufactured, grew, extracted, processed, assembled, constructed, erected, installed, repaired, serviced, treated, imported, exported, sold, supplied or distributed including the packaging materials, labels, containers (other than a Vehicle), the design formula or specification, directions, instructions or advice given or omitted in connection with such Products. The term includes anything which by operation of a law of the Commonwealth of Australia You are deemed to have manufactured.

**“Professional Service”** means service, advice, counselling, diagnosis, treatment of persons or animals, prescription, or service provided by You which is normally provided for a fee by professional persons.

**“Property Damage”** means physical loss or damage that occurs during the Period Of Cover to tangible property and loss of use of tangible property arising out of physical loss or damage to other tangible property

**“Period of Cover”** means the time cover commenced to the time cover expires. The dates are shown on the current schedule. Unless stated otherwise, cover shall expire at 4.00pm local time at the place where You arranged the cover.

**“Situation”** means the situation stated in the current schedule.

**“Stock”** means:

1. products and material You intend to sell;
2. raw or consumable materials used by You to make or alter Your products;
3. Your products while being made, repaired or altered;
4. any consumable products or materials used in Your business.

**“Subsidiary Company”** means any company in which You have a controlling interest. For the purpose of this definition the term “controlling interest” shall mean the beneficial ownership of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders of the company.

**“Tool Of Trade”** means a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your Business Premises or a work site You have been contracted to work at. Tool Of Trade does not include Vehicles whilst travelling to or from a work-site or Vehicles that are used to carry goods to or from any premises.

**“Vehicle”** means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power including any trailer or other attachment that is normally towed or operated from any such machine.

**“Watercraft”** means any vessel, craft or thing made to or intended to float on or in or travel on or through or under water.

**“We”, “Us”, “Our”** means Wesfarmers General Insurance Limited, ABN 24 000 036 279, trading as Lumley Insurance.

**“Your business”** means Your occupation shown on the current schedule and all ancillary or incidental occupations.

**“You”, “Your”, “Yours”**, where used in this Section, mean:

- (a) the persons or organisations shown in the current schedule;
- (b) any subsidiary companies of (a) above, existing at the effective date of the Period Of Cover as shown in the current schedule, whose places of incorporation are within Australia or its external territories;
- (c)
  - (i) any company acquired by, and whose operations are controlled and managed by, a person or organisation shown in the current schedule or a company referred to in (b) above during the Period Of Cover as a result of consolidation, merger or purchase;
  - (ii) any subsidiary entity that is incorporated by a person or organisation shown in the current schedule or by a company referred to in (b) above, during the Period Of Cover;

Provided that any such acquisition or incorporation:

- (i) must be notified to Us within ninety (90) days of it being effected;
  - (ii) must be of the same type of business as Your Business; and
  - (iii) must be incorporated within Australia or its external territories;
- (d)
  - (i) any director, executive officer, Employee or partner of a person or organisation shown in the current schedule or a company referred to in (b) or (c) above, but only while acting within the scope of their duties in such capacity; and
  - (ii) any shareholder of a company referred to in (a), (b) or (c) above, but only while acting within the scope of their capacity as shareholders of such company;
- (e) any office bearer or member of a canteen, social and/or sporting club, welfare or child care organisation, first aid, fire or ambulance service, all or any of which has been formed with the consent of any of the parties in (a), (b) or (c) above.

**“Your Business”**, for the purposes of this Section, means Your occupation shown on the current schedule and all ancillary or incidental operations including the ownership and tenancy of premises, private work carried out with Your consent by any of Your Employees for any director or senior official of Yours and the provision and management of canteen, social, sports, welfare or child care organisations for Your Employees and internal first aid, fire and ambulance services.

### **What You are covered for**

Subject to the Limits of Liability stated in the Schedule and the terms and conditions of this Cover Section, We will pay all sums which the Insured Person shall become legally liable to pay for compensation in respect of;

#### **Personal Injury,**

- 1) bodily injury, sickness, disease, disablement, loss of consortium, shock, fright, mental anguish and mental and mental injury, including death at any time resulting from any of these;
- 2) wrongful entry, wrongful eviction, false arrest, wrongful detention, false imprisonment, malicious prosecution and humiliation;
- 3) assault, provided you did not commit the assault or direct the assault unless reasonable committed for the purpose of preventing Personal Injury or Property Damage;
- 4) libel, slander, defamation of character;
- 5) invasion of right of privacy,

which occurs during the Period of Cover or

#### **Property Damage,**

physical loss or damage that occurs during the period of cover to tangible property and loss of use of tangible property arising out of physical loss or damage to other tangible property, occurring within the

#### **Geographical Limit,**

- 1) anywhere within the Commonwealth of Australia and its external territories;
- 2) elsewhere in the world but only:
  - a) arising from the presence outside Australia of any travelling executives, Non Manual Salesmen or other non-manual Employees who are normally resident in Australia;
  - b) any part of the world to which your products are exported except products you know have been exported to the United States of America or the Dominion of Canada or any country, territory or protectorate where the laws of these countries are applied.

As a result of an (Occurrence) means an event including continuous or repeated exposure to substantially the same general conditions, which results in personal injury or property damage which you neither expected nor intended to happen. All personal injury or property damage resulting from one original cause will be treated as being caused by the one occurrence.

Arising out of Your Business, We will not pay more than the Limit of Liability shown on the current schedule under the Public and Products Liability Cover Section in respect of any one claim or series of claims arising out of any one (Occurrence) means an event including continuous or repeated exposure to substantially the same general conditions, which results in personal injury or property damage which you neither expected or intended to happen.

All personal injury or damage to property resulting from one original cause will be treated as being caused by the one occurrence. Or, for (Products) anything after it is no longer in your possession or control that You manufactured, grew, extracted, processed, assembled, constructed, erected, installed, repaired, serviced, treated, imported, exported, sold, supplied or distributed including the packaging materials, labels, containers (other than a Vehicle) , the design formula or specification, directions, instructions or advice given or omitted in connection with such Products.

The term includes anything which by operation of a law of the Commonwealth of Australia You are deemed to have manufactured. Liability, in respect of all claims during the (Period of Cover) time cover commenced to the time cover expires. The dates are shown on the current schedule. Unless stated otherwise, cover shall expire at 4.00pm local time at the place where you arrange the cover.

### **Additional Payments**

We will pay the following amounts in addition to the Limit Of Liability:

1. all charges, expenses and legal costs incurred by Us or by You with Our consent for the defence or negotiation or settlement of any claim for which You are covered by the Public and Products Liability Cover Section;
2. all charges, expenses and legal costs for which You are covered by the Public and Products Liability Cover Section, necessarily incurred by You in relation to any coroner's inquest into matters that happened during the Period Of Cover.
3. for the cost of emergency first aid to other persons and for costs incurred with Our consent for temporary repairs, shoring up or protection of damaged property of others.

Provided that such amounts shall not be payable in addition to the Limit Of Liability if the claim is subject to or determined by the law of the United States of America or the Dominion of Canada or any country, territory or protectorate where the laws of these countries are applied.

### **Additional Payments you have to pay for**

If We pay the full Limit Of Liability, then You must pay Your proportion of "Additional Payments." Your proportion is calculated by dividing the total of the Limit Of Liability by the cost of the total amount required to dispose of or settle the claim (but not the cost of additional payments) against You.

### **Products Liability Limit Aggregated**

We will not pay more than the Limit Of Liability shown on the current schedule, for all legal liability from all Occurrences that is caused by Your Products during the Period Of Cover.

## **Exclusions applicable to all sections of this Policy**

We will not cover You for any liability:

### **1. Aircraft, Hovercraft**

caused by or arising from:

- a) ownership, possession, maintenance, operation or use by You or on Your behalf;
- b) any of Your Products which are with Your knowledge incorporated into the structure, machinery or instruments;

of any Aircraft or Hovercraft.

### **2. Asbestos**

death, illness, loss or damage of any nature which is directly or indirectly connected in any way with asbestos.

### **3. Contractual Liability**

- a. assumed under a contract or agreement other than liability for Personal Injury and Property Damage that You would have been liable for by law if the contract or agreement had never existed.
- b. for delay in or lack of performance by You or on Your behalf arising from any contract or agreement.

This exclusion 3 does not apply to:

- (i) liability assumed by You under a warranty of fitness or quality as regards Your Products,
- (ii) liability assumed by You under any lease of real or personal property but this exemption does not extend to any obligation to insure such property.

### **4. Employer's Liability (Workers' Compensation)**

- (a) for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service, or through the breach of any duty owed to that person, where You:
  - (i) are indemnified or entitled to be indemnified (either in whole or in part) in respect of claims for damages under a policy of insurance (which expression includes arrangements made by You to provide accident insurance for Your workers under a licence to self insure) arranged (whether required by law or not) in accordance with any workers' compensation legislation or accident compensation legislation; or
  - (ii) would have been indemnified or entitled to be indemnified had You arranged a policy of insurance as required by such legislation.
- (b) for Personal Injury to any person arising out of, or sustained in the course of, the employment of such person in Your service in Western Australia, other than a person of whom You are deemed to be an employer by reason only of Section 175 of the Workers' Compensation and Rehabilitation Act 1981 (WA).
- (c) for mental anguish suffered by any person arising out of, or in the course of, that person's employment by, or service to, You.

(d) for Personal Injury arising out of Employment Practices or out of the libel, slander or humiliation of any person while in Your service or while employed by You.

(e) any other liability imposed by the provisions of any workers' compensation legislation or accident compensation legislation or any industrial award, agreement or determination.

## **5. Erections, alterations and additions**

directly or indirectly arising out of the construction, erection, alteration, demolition of and/or addition to buildings by You or on Your behalf.

This exclusion 5 will not apply to alteration of or addition to buildings owned and/or occupied by You where the cost of such alterations or additions does not exceed

\$500,000 or 10% of the Limit Of Liability, whichever is the lesser.

This exclusion shall not apply to your plumbing work carried out in Victoria.

### **6a. Faulty workmanship**

arising directly or indirectly from or in connection with the cost of performing, completing, reworking, correcting or improving any service or work done or promised to be done by You or someone else on Your behalf;

This exclusion shall not apply to cover granted under Section 2 of this policy

### **6b. Product Defect**

for damage to Your Products if the damage is attributed to any defect in them or to their harmful nature or unsuitability.

## **7. Libel, slander, defamation**

arising from the publication or utterance of libellous, slanderous or defamatory material:

- a. made prior to the effective date of this insurance; or
- b. that You knew to be false and the material was approved to be released by You;
- c. arising from publishing of books, newspapers, magazines and similar material;
- d. arising from publishing of any political or social material;
- e. arising from radio or television broadcasting or any other medium of public transmission such as internet, telephone or dedicated landlines.

## **8. Loss of use of property**

for loss of use of tangible property that has not been physically damaged or destroyed and is caused by:

- a. delays, non completion or poor performance by You or any other person acting on Your behalf in relation to any contract or agreement; or
- b. the failure of Your Products to meet the level of performance, quality, fitness or durability that You have implied or promised but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of Your Products after they have been put to use by any person or organisation other than You.

## **9. Penalties**

- a. for fines or penalties imposed on You due to the application of government legislation or order of a court of law; or
- b. for punitive, exemplary or aggravated damages; or
- c. for any additional damages resulting from the multiplication of compensatory damages against You; or
- d. for liquidated damages.

## **10. Pollution**

arising directly or indirectly out of:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants;  
Exclusion 10 (a) will not apply to liability for Personal Injury or Property Damage where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected happening which takes place in its entirety at a specific time and place;
- (b) testing, monitoring, clean-up, removal, containment, treatment, detoxification or neutralisation of Pollutants whether or not any of the foregoing are or should be performed by You or by others;
- (c) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants caused by any Products that have been discarded, dumped, abandoned or thrown away by others;
- (d) the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

## **11. Product Recall**

for the costs incurred by You in recalling, withdrawal, removal, inspection, repair, reconditioning, loss of use or replacement of Your Products.

## **12. Professional Liability**

arising out of Your Professional Service or failure to provide Professional Service or any act, mistake or omission You make relating to or from Your Professional Service if such service or act is of a kind ordinarily undertaken for a fee.

Emergency first aid is not a Professional Service unless You are a qualified medical person and You have insurance for Your Professional Services liability.

## **13. Property in your physical or legal control**

- a. for damage to property owned by, leased or rented to You;
- b. for damage to property not belonging to You but in Your physical and legal control other than the property described in Additional benefits - Property in Physical and Legal Control.

## **14. Vehicles**

caused by or arising from the use of, ownership or possession of any Vehicle which is:

- a) registered or required by law to be registered;
- b) insured for compulsory injury insurance or required by any government legislation to be insured for injury liability.

## **15. Watercraft**

caused by or arising from the use, ownership, or possession of any Watercraft which exceeds 8 metres in length, but this exclusion shall not apply in regard to such Watercraft operated by independent contractors whilst being used by You for business entertainment.

## **16. Internet Operations**

directly or indirectly caused by or arising from Your Internet Operations.

- (a) use of electronic mail systems by You, Your employees or by any other person with Your Permission; or
- (b) access through Your network to the world wide web or a public internet site by You, Your employees or by any other person with Your permission; or
- (c) access to Your intranet (meaning internal company information and computing resources) which is available through the world wide web; or
- (d) the operation and maintenance of Your web site.

This Exclusion will not apply to liability arising out of any material which is already in print by the manufacturer in support of its products which is also reproduced on Your web site, but the Exclusion will still apply to any other advice or information located on Your web site that is used for the purposes of attracting customers.

For the purposes of this Exclusion, “employee” means any person engaged under a contract of service or apprenticeship with You.

## **17. Genetically Modified or Engineered Organisms (GMO)**

Directly or indirectly caused by or arising from the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO)

For the purpose of this Exclusion, a Genetically Modified or Engineered Organism is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms

## **18. Transmissible Spongiform Encephalopathy (TSE)**

Directly or indirectly caused by or arising from Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new variant Creutzfeldt-Jakob Disease (vCJD).

This Exclusion applies regardless of any other contributing or aggravating cause or event.

## **19. Welding and Hot Work**

Personal Injury or Property Damage directly or indirectly caused by or arising out of or consequent upon or contributed to or by arc or flame cutting, flame heating arc or gas welding or similar operation in which welding equipment is used.

Exclusion 19 shall not apply if such activity is conducted in strict compliance with the Australian Standard applicable to Safety in Welding and Allied Process Fire Precaution as set out in the standard or as amended from time to time.

## **Additional benefits applicable to this Section**

Property in Your Physical and Legal Control

Exclusion 13 will not apply to the following property:

1. buildings including landlords' fixtures and fittings used by You for Your Business (including permanent fixtures) which are leased or rented to You and which You are not required to insure for Property Damage;
2. buildings, (including permanent fixtures and contents) which are not owned by or leased to You and which You have temporarily occupied for Your Business purposes;
3. Vehicles not belonging to or used by You whilst temporarily contained in a Vehicle parking area owned or controlled by You provided You do not require payment from the drivers or owners of the Vehicles parked;
4. property that is being stored, used or repaired by You other than property that You are transporting in a Vehicle or storing where You are receiving payment for the transportation or storage;
5. property belonging to visitors or to Your Employees.

The maximum We will pay for Your legal liability for additional liability benefit - property in Your physical and legal control benefits - paragraph 4 - is the Limit Of Liability for goods in physical legal control shown on the current schedule.

### **Vehicles used as a tool of trade**

Exclusion 14 (vehicles) will not apply to liability for Personal Injury (not covered by compulsory liability insurance) or Property Damage caused by the use of a Vehicle as a Tool Of Trade.

### **Vehicles unloading or loading goods**

Exclusion 14 (vehicles) will not apply to liability incurred because goods are being unloaded or loaded from the Vehicle provided the Vehicle is not being driven or towed during unloading or loading. For the purpose of this additional benefit the term "loading or unloading" shall mean the single action of transferring the weight of the goods.

## **Optional Benefits applicable to this Section**

### **Products exported to the continent of North America**

The indemnity granted by this Section is extended to include any judgment, award or settlement made within countries which operate under the laws of the United States of America or Canada or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:

1. Cover only applies in respect of Your legal liability for Personal Injury or Property Damage that arises out of Your Products exported to North America,
2. Cover is not provided for:
  - a. Personal Injury or Property Damage arising out of the discharge, dispersal, emission, release or escape of Pollutants,
  - b. the cost of removing, nullifying or cleaning up Pollutants, c.
  - c. the cost of preventing the escape of Pollutants,

- d. Personal Injury or Property Damage arising from the existence of asbestos,
- e. Any claim for compensation if in North America You have:
  - i) any assets other than Your Products,
  - ii) a related or subsidiary company,
  - iii) any person or entity with power of attorney,
  - iv) any franchisor

## **Special Conditions Applicable to all sections of this Policy**

### **1. Claims**

You must provide as soon as practicable written notice of:

- a. any claim made against You,
- b. the receipt of written notice from anyone that it is their intention to make a claim against You,
- c. every Occurrence or circumstance known to You which You believe could give rise to a claim under this Section.

### **2. Discharge of liabilities**

We may at any time pay You for all claims against You under this Section which arise out of one Occurrence or a series of Occurrences or where the Limit Of Liability is subject to an aggregate limit (such as liability caused by Your Products):

- a) the Limit Of Liability (after amounts already paid by Us have been deducted); or
- b) any lower amount for which the claim(s) can be settled.

When We have made payment to discharge Our liability:

- c) We will relinquish conduct of and control of the claims(s); and
- d) We will not pay further amounts under the Public and Products Liability Cover Section in connection with the claim(s).

If We have made payment to discharge Our liability:

- e) You will pay Us costs, charges and expenses We are entitled to from You that were incurred prior to the date of Our payment which discharged Our liability;
- f) We will pay You costs, charges and expenses incurred by You (with Our written permission) prior to the date of Our payment which discharged Our liability.

### **3. Premium adjustment**

If the premium for this policy has been calculated on any estimates given by You, You must keep accurate records containing all relevant particulars and at any reasonable time allow Us to inspect such records.

Following the expiry of each Period Of Cover You must supply Us with such records as We may reasonably require so that the premium for that period may be calculated. Subject to any minimum premium applicable, the difference must be paid by or will be allowed to You as the case may be.

#### **4. Prevention of Accidents**

You must;

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings plant in a safe and sound condition;
- (b) take all reasonable precautions to:
  - (i) prevent Personal Injury and Property Damage
  - (ii) prevent the manufacture, sale or supply of defective Products; and
  - (iii) comply and ensure that You, Your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property
- (c) take reasonable action to trace, recall or modify any of Your Products containing any defect or deficiency of which You have knowledge or have reasons to suspect any defect or deficiency.

#### **5. Cross liability**

Where You are comprised of more than one entity, the term “You” will be considered as applying to each entity in the same manner as though a separate policy had been issued to each entity, provided that Our total liability will apply as though there were no separate policies issued to each entity. We agree to waive all rights of subrogation or action which We may have against any such entity in relation to matters covered by this Section.

#### **6. Indemnity to principal**

The insurance by the Public and Products Liability Cover Section extends to indemnify any principal but only for liability as principal arising out of work performed by You under a contract for that principal. Our liability is limited to the lesser of the Limit Of Liability by this Section or the amount of liability cover required under the contract to perform work.

#### **7. Liability not to be Admitted**

The Insured persons shall not admit liability for or offer to settle any claim without Our written consent. We shall be entitled to take over and defend, any claim with full discretion in the conduct of the claim.

#### **8. Preventing our right of recovery**

If you have agreed not to seek compensation from another person who liable to compensate you for any loss, damage or liability, which is covered by this policy, we will not cover you under this Policy for the loss, damage or liability.

#### **9. Subrogation**

In the event of a payment under this Policy to You or on Your behalf, We shall be subrogated to all Your rights of recovery against any person or organisation. At Our request and Our expense, You shall do all things reasonably required by Us for the purpose of enforcing any rights and remedies or of obtaining indemnity from other parties to which We are entitled pursuant to this Policy.

#### **10. Notification of Claims Settled**

We and You both agree that We will notify the Plumbing Industry Commission in writing in the manner required by the plumbing Industry Commission of the settling or payment of any claim under this Policy.

### **11. Ministerial order to prevail**

We agree that if any terms of this Policy conflicts, or is inconsistent with the Ministerial Order, then this Policy is to be read and to be enforceable as if it complied with that order.

### **12. Insurance Contract Act 1984**

Nothing contained in this Policy is to be construed to reduce or waive either Your or Our privileges, rights or remedies available under the Insurance Contract Act 1984.

### **13. We will comply with court orders**

We agree to comply with any order made against You by a court, the Victorian Civil and Administrative Appeals Tribunal or any other competent judicial body, in respect of any liability for which You are indemnified under this Policy (including any Excess that You may be obliged to pay Us).

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## SECTION 2 – CONSUMER PROTECTION LIABILITY

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### Definitions applicable to Consumer Protection Liability section only

Any word or expression which this section of the Policy defines as having a particular meaning will have the meaning everywhere it appears in this section of the Policy.

#### 1. “Building Owner” means

The person for whom plumbing work has been, is being, or is about to be, carried out and includes:

- a) Any occupier of the land, building or home where the plumbing work is carried out, and
- b) Any person who is the owner for the time being for such land, building or Home, and
- c) If the plumbing work is carried out on land in a plan of subdivision containing common property, the body corporate for that land or a building on that land, and
- d) Any assignee of the building owner’s rights under contract, and
- e) Any person who has contracted with another person to provide the plumbing work.

#### 2. "Completed work liability" means

For the purposes of this Order, completed work liability is any liability that arises as a result of any personal injury to a third party, or loss or damage to the property of a third party (other than property that is part of the plumbing work itself), directly or indirectly related to or arising from the plumbing work –

- a) after the issue of the compliance certificate for the work; or
- b) if no compliance certificate is issued for the work, after the plumber who carried out the work stopped carrying out the work.

#### 3. “Contract” means

A contract to carry out plumbing work and includes a domestic building contract or other building contract that includes plumbing work

#### 4. “Defect” in relation to plumbing work includes:

- a) A failure to carry out the plumbing work in a proper and workmanlike manner and in accordance with any plans and specifications set out in the Contract.
- b) A failure to use materials in the plumbing work that are good and suitable for the purpose for which they are used
- c) The use of materials in the plumbing work that are not new (unless the Contract permits use of materials that are not new)
- d) A failure to carry out the plumbing work in accordance with, and in compliance with, all laws and legal requirements including but without limiting the generality of this clause, the Building Act 1993 (Vic) and any regulations made under that Act.
- e) A failure to carry out the plumbing work with reasonable care and skill and, in the case of domestic plumbing work, a failure to complete the work

- (i) By the date (or within the period) specified by the Contract, or
  - (ii) Within a reasonable time, if no date (or period) is specified
- f) If the Contract states the particular purpose for which the plumbing work is required, or the result which the building owner wishes the plumbing work to achieve, so as to show that the building owner relies on your skill and judgment, a failure to ensure that the plumbing work and any material used in carrying out the plumbing work:
- (i) Are reasonably fit for that purpose, or
  - (ii) Are of such a nature and quality that they might reasonable be expected to achieve that result.
- g) A failure to maintain a standard or quality of plumbing work specified in the Contract.

A reference to any material in sub-clause (b) or (f) does not include any material that is supplied by the building owner (or the building owner's agent.)

**5. "Defects Liability" means**

Liability to pay for the cost of rectifying any defect in your plumbing work carried out in Victoria.

**6. "Disappearance" means**

Cannot be found after due search and inquiry.

**7. "Domestic plumbing work" means**

Plumbing work performed or intended to be performed on or in relation to a home or any building or structure on land or which a home is or is intended to be situated.

**8. "Home" means**

Any residence premises and includes any part of a commercial or industrial premises that is used as a residential premises and also includes any houseboat that is less than 8 metres in length, but does not include:

- a) Any residence that is not intended for permanent habitation, or
- b) A rooming house within the meaning of the Residential Tenancies Act 1997 (Vic), or
- c) A motel, residential club, residential hotel or residential part of licensed premises under the Liquor Control Reform Act 1998 (Vic), or
- d) A nursing home, hospital or accommodation associated with a hospital, or
- e) Any residence that the regulations made under the Domestic Building Contracts Act 1995 (Vic) state is not a home for the purposes of the definition of 'home' in that Act.

**9. "Insolvent under administration" means**

A person who is bankrupt in respect of a bankruptcy from which the person has not been discharged and includes:

- a) A person who has executed a deed of arrangement under Part X or the Bankruptcy Act 1966 (Cth) (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with, and
- b) A person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 (Cth) (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition.

**10. “Non-domestic plumbing work” means**

Plumbing work that is not domestic plumbing work.

**11. “Product defect” means**

A defect in any appliance, material, substance or other thing that was supplied or used by you in connection with plumbing work.

**12. “Trade practices liability” means**

Any liability for the cost of rectifying any defect in plumbing work carried out in Victoria that arises as a result of conduct by you in connection with the plumbing work that contravenes Section 52, 53, 55A or 74 of the Trade Practices Act 1974 (Cth) or Section 9, 11 or 12 of the Fair Trading Act 1999 (Vic).

**13. Special provisions**

**(1) " Provision concerning cancellation"**

We agree that the cancellation of this policy -

- a) will only take effect 30 days after we give both the Plumbing Industry Commission and you notice in writing of the cancellation; and
- b) has no effect on any of our obligations under the policy with respect to the liabilities referred to in clauses 10 (a) (defects), 10(b) (trade practices liability) and 11 (consequential financial loss and non-completion) of the Ministerial Order in relation to plumbing work that was carried out while the policy was in force; and
- c) has no effect on any of our obligations under the policy with respect to the liabilities referred to in clauses 10(c) (public liability) and 10 (d) (completed work liability) of the Ministerial Order in relation to any personal injury to a third party or loss or damage to the property of a third party (other than property that is part of the plumbing work itself) that occurred while the policy was in force.

**(2) "Notification concerning claims settled"**

We and you both agree that we will notify the Plumbing Industry Commission in writing in the manner required by the Minister of the settling or payment of any claim under the policy.

**14. Coverage**

We will cover you under this section of the Policy for:

- (1) Defects Liability
- (2) Trade Practices Liability
- (3) In respect of domestic plumbing work carried out in Victoria any liability arising from:
  - a) Non completion of the plumbing work due to:
    - (i) Your death or legal incapacity
    - (ii) Your disappearance
    - (iii) You becoming an Insolvent Under Administration
    - (iv) The cancellation or suspension of your licence as licensed plumber under the Building Act 1993 (Vic), or
    - (v) The early termination of the Contract by the building owner as a result of your wrongful failure or refusal to complete the plumbing work, and

- b) Any consequential financial loss reasonably incurred by the building owner as a result of any defects or non-completion of the plumbing work as described in Clause 14.3 (a) including but not limited to
  - (i) The loss of any deposit or progress payment (or any part of any deposit or progress payment), and
  - (ii) The cost of alternative accommodation, removal and storage costs that are reasonably and necessarily incurred.

The cover provided under clause 14.3(b) also applies to any Contract for both domestic and non-domestic plumbing work in which the non-domestic plumbing work component does not exceed 20% of the total Contract Value.

### 15. Limit of Liability

- a) Our maximum liability in respect of any claim or series of claims in relation to Compliance Certificate (or, in the case of domestic plumbing work, in relation to each home if the Compliance Certificate relates to more than one Home) shall not exceed the limit of indemnity.
- b) The maximum total amount that we will pay out under this Section of the Policy for all claims shall not exceed the limit of liability.

### 16. Defence of Claims

In addition to the limit of liability we also pay the reasonable legal costs and expenses associated with the successful enforcement of a claim against you or us. However, we will not pay the legal costs of any person making a claim against You that are not directly or indirectly related to:

- a) The enforcement of this section of the Policy, or
- b) A liability in respect of which you are covered under this section of the Policy.

Provided that:

- (i) We will not be obliged to pay any claim or judgment or to defend any claim or legal action after the limit of liability has been exhausted by payment of judgments or settlements.
- (ii) If a payment exceeding the limit of liability has to be made to dispose of a claim, our liability to pay any legal costs and expenses under this clause will be limited to that proportion of those legal costs and expenses as the limit of liability bears to the amount paid to dispose of the claim.

### 17 Exclusions applicable to Consumer Protection Section (2) Only

We do not cover you for:

17.1 Any defects liability resulting from a product defect provided that:

- a) We bear that onus of establishing that the claim (or part of the claim) is based on a product defect, and
- b) We agree that nothing in this exclusion removes the cover given to you by this section of the Policy in relation to you supplying or using an appliance, material, substance or other thing that your were unaware was defective or that you should not reasonably have been aware was defective

17.2 Any loss, injury or damage resulting from:

- a) Fair wear, tear or depreciation of plumbing work, or
- b) A failure by the building owner to reasonably maintain plumbing work.

17.3 Any consequential financial loss in relation to non-domestic plumbing work

17.4 Claims for liquidated damages for delay or damages for delay, that may arise under a Contract provided that this exclusion does not apply to any increase in rectification costs caused by a delay.

## **18 Conditions applicable to Consumer Protection Liability**

### **18.1 Period of Cover**

For defects liability, trade practices liability and liabilities referred to in clause 14 of this section of the Policy, you are only covered in respect of plumbing work for which a Compliance Certificate is required from the time you agree to carry out that work until:

- a) 6 years after you last issued the Compliance Certificate in relation to that work, or
- b) If you did not issue a Compliance Certificate in relation to the work, 6 years after you stopped carrying out that work.

The indemnity provided by the insurance for defects liability, trade practices liability and liabilities referred to in clause 14 of this section of the Policy continues to apply throughout the relevant period specified in this clause even if you cease to be a licensed plumber before the end of that period and even if you cease to maintain this section of the Policy.

### **18.2 Limitation for common property**

This clause applies if plumbing work is carried out on land in a plan of subdivision containing common property and a claim is paid by us in relation to the common property.

We will reduce the amount we will pay under this section of the Policy in respect of any one home on land in the plan of subdivision by an amount calculated by dividing the amount of the claim paid by us in relation to the common property by the number of homes on land in the plan of the subdivision.

### **18.3 Limitation concerning non-completion of work**

If you fail to complete plumbing work for any reason listed in clause 11 of the Ministerial Order, then this section of the Policy does not cover you for claims for the whole or a specified part of any payment made under a Contract that exceeds the value of the work completed at the time of payment.

### **18.4 Deemed acceptance of claims**

This clause only applies in relation to domestic plumbing work.

We agree to accept liability for a claim if we do not notify the person making the claim within 90 days from when we receive the claim in writing that we accept or dispute the claim, unless we obtain an extension of time from the person in writing or from the Victorian Civil and Administrative Appeals Tribunal.

### **18.5 Claims not to be refused on the grounds that the Policy obtained by fraud, etc.**

This clause only applies in relation to domestic plumbing work.

We agree that we will not refuse to pay a claim under this section of the Policy on the ground that this section of the Policy was obtained by misrepresentation, fraud or non-disclosure by you or anyone acting on your behalf.

You agree that if we make a payment under this section of the Policy to, or for the benefit of, a building owner under the circumstances contemplated by this clause, by doing so we are not restricting our right to recover that payment from you.

18.6 We give effect to Certificates

This clause only applies in relation to domestic plumbing work.

If we give you a Certificate stating that you are covered by insurance under this section of the Policy, we agree that we will not refuse to pay a claim on that insurance on the ground that you have not paid the premium for the insurance.

You agree that if we make a payment under this section of the Policy to, or for the benefit of, a building owner under circumstances contemplated by this clause, by doing so we are not restricting our right to recover that payment from you.

18.7 Deemed notice of defects

We agree that if a person gives notice of a defect in writing to you or us, that person is to be taken for the purposes of this section of the Policy to have given notice of every defect of which the defect notified is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

18.8 Claimant may enforce this section of the Policy direction in certain cases

We and you both agree that:

- a) A person who is entitled to claim against you in respect of any liability for which you are indemnified under this section of the Policy may enforce this section directly against us for the person's owner benefit if
  - (i) Any event listed in clause 11 of the Ministerial Order of the Policy occurs, or
  - (ii) You refuse to make a claim against us, or
  - (iii) There is an irretrievable breakdown of communication between you and us and
- b) For the purpose of such enforcement the person has the same rights and entitlements as you would have had under any legislation applicable to you
- c) We will pay to the person the full amount of any liability for which you are indemnified under this section of the Policy despite any failure by you to pay any deductible that you are required to pay.

18.9 You must co-operate with us

- a) You agree in relation to a claim or prospective claim:
  - (i) To make reasonable efforts to assist and inform us or our agent, and
  - (ii) To attend the relevant building site for the purpose of inspecting, rectifying or completing plumbing work (unless the building owner refuses you access to the site).
- b) We may reduce the amount of a claim by a building owner by an amount that reasonable represents the cost resulting from an unreasonable refusal by the building owner to give you access to a building site if we have asked you to attend the site.

**ATTACHING TO AND FORMING PART OF THE WITHIN  
POLICY**

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**Care, Custody and Control Endorsement**

Notwithstanding anything contained in Exclusion 13, hereof to the contrary, it is agreed that the Policy includes Your legal liability (limited to the amount specified in the Schedule) for property belonging to others but in Your care, custody or control.

Provided that:

- (a) the excess specified in the Schedule shall apply to this Extension for each and every claim or series of claims arising out of one event.
- (b) this Extension shall not apply to indemnify You for claims arising out of Damage which is inevitable or could reasonably have been foreseen by You having due regard to the nature of the property and the use to which it was being put when the damage occurred.
- (c) Our liability in the aggregate during any one Period of Insurance shall not exceed the Limit of Liability stated in the Schedule for this Extension.

In all other respects the Policy remains unaltered.