

## **FMC \$1 Million Warranty Terms & Conditions for the Property Owner**

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### **The Warranty**

This warranty is provided by FMC Australasia Pty Ltd Specialty Solutions 12 Julius Avenue North Ryde, NSW 2113 Australia (FMC Australasia) to customers who have purchased an FMC Termite Management System on the terms and conditions set out below.

In this Warranty, the following meanings apply:

1. Buildings means the residential or commercial building(s) (as the context requires) where an FMC Termite Management System has been installed and/or applied.
2. FMC Termite Management **System** means any or all of FMC Australasia's range of pre- and post-construction termite solutions including but not limited to HomeGuard and Biflex.
3. FMC Accredited Pest Control Company means a Professional Pest Control Company that holds a valid General Pest management and Timber Pest Management competencies, White card (Site safety induction) and a current HomeGuard accreditation certificate
4. Property Owner(s) means the registered proprietor(s) of the property.

**What is covered by the Warranty:** Subject to the details listed on the front of the Warranty Certificate, the protected structure/s of the site as detailed are covered against any direct physical damage to structural and or decorative timbers caused by subterranean termites that occurs subsequent to the Warranty commencement date but prior to the next annual inspection date. This Warranty is limited to any valid claims that total \$1,000,000 AUD in the aggregate.

**Duration of FMC Warranty:** The term of the FMC Warranty is as stated on the Warranty Certificate provided by the FMC Accredited Pest Control Company. The Warranty duration for HomeGuard is fifty (50) years or the design life of the building, whichever is shorter. The Warranty duration for Eflex is two to ten (2-10) years depending on geographic location, soil type, climate, product, and rate used.

**Warranty activation:** In the event of a subterranean termite infestation of the Buildings due to the failure of the installed FMC Termite Management System, which directly results in damage by termites being caused during the Warranty Period, FMC Australasia Pty Ltd (FMC Australasia) will provide coverage, subject to these general warranty conditions, and up to a maximum amount of A\$1,000,000 per property:

1. Procure the elimination of the active subterranean termites within the protected structure(s) of the Building as listed on the front of the warranty certificate,
2. Cause the repair of the FMC Termite Management System where practical or otherwise treat for termite control; and/or
3. Repair or replace all structural and decorative timbers damaged by subterranean termites.

### **Responsibilities of property owner(s)**

1. During the warranty period the Property Owners must, at their own expense, arrange for thorough and regular termite inspection(s) in accordance with AS4349 and AS3600 Series Suite, for the presence of termites at intervals recommended by their FMC Pest Control Company or as recommend within the last inspection report, but not exceeding 12 months.
2. Must not make any alterations, renovations or additions to the Building or disturb any garden beds, soils, or lawns next to the Building until you notify your FMC Accredited Company who will advise on any works as to their impact (if any) on your Termite Management System.
3. You must immediately notify your FMC Accredited Company in writing if you believe you have disturbed your FMC Termite Management System or the barrier it creates, in any way.
4. You must immediately notify your FMC Accredited Pest Control Company should you find active termites anywhere on the property – do not disturb any found termite activity or use any insecticides on the identified activity without first notifying the FMC Accredited Pest Control Company and follow their advice.

**Making a claim:** You must ensure you have all the annual inspection reports readily available, then first contact your FMC Accredited Pest Control Company. They will assist you in determining whether there is a claim that you can make under this Warranty. FMC Australasia will cover the cost of an initial inspection by the FMC Accredited Pest Control Company if there is a valid claim under this Warranty.

**Warranty limitations:** This FMC Warranty does not cover:

1. Any incidental damage not directly related to the effects of the Subterranean Termite activity (e.g., wood rot)
2. Damage from pests other than the Subterranean Termite including without limitation Drywood or Dampwood Termites (Families: *Kalotermitidae* and *Termopsidae*)
3. Damage to chattels of any nature (including without limitation carpets, floor coverings, antiques, heirlooms, artwork or painting furnishings and fittings.), any pergolas and timber decking, electrical wiring, outhouses (unless the FMC Termite Management system is applied as per a detailed plan), fences, gates, and garden structures.
4. Damage caused by termites bypassing the FMC Termite Management System due to incorrect installation or inspections.
5. Repair of any item that does not comply with the Building Code of Australia or any other similar relevant legislation or standards.
6. Any damage the Property Owner or persons other than those authorised by FMC Australasia may cause in investigating for the presence of Subterranean Termites.
7. Any remedial treatments or repairs not authorised by FMC Australasia.

**ACL applies:** FMC Australasia's goods come with guarantees that cannot be excluded under the Australian Consumer Law. In the event of product failure, 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 the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. This warranty is an additional warranty offered by FMC Australasia. It is not intended to exclude or limit your rights and remedies under the Australian Consumer Law or other laws. The expiry of this warranty does not affect those rights.

**Warranty Exclusions:**

To the extent permissible by law, this Warranty shall be void and have no effect if any of the following circumstances occur at any time:

1. The Property Owners fail to carry out any of the owners' responsibilities specified in this Warranty.
2. Annual termite inspections, at the property owner's cost, are not done by a licensed Pest Controller, who has a timber pest license and any recommendations outlined within the report must be implemented by the owner to maintain the Warranty. To avoid doubt, where there has been evidence of damage caused by subterranean termites before the warranty commencement date, this warranty will not apply unless that damage has been completely remedied before the warranty commencement date.
3. The Property Owners fail to provide true and correct information to FMC Australasia and/or an FMC Accredited Pest Control Company or participate in misleading, deceptive or fraudulent conduct in connection with this Warranty.
4. Termites enter the FMC Termite Management System protected Building through any manner other than a product performance failure of the FMC Termite Management product(s).
5. The Property Owner fails to provide full internal and external access to all areas of the Building during the annual inspections.
6. The FMC Termite Management System is installed or applied by a company that is not an FMC Accredited Pest Control Company at the time of installation/application.
7. If no active termites are found in the Building at the time of inspection of reported damage by an FMC Accredited Pest Control Company.

**Other important legal terms and conditions:**

**Subject to Warranty, disclaimer where permissible:** Other than as set out in this Warranty and to the extent permitted by law FMC Australasia disclaims and excludes all other obligations or liabilities, either express or implied, arising by law or otherwise, concerning any non-conformance or defect in the FMC Termite Management system and the termite barrier it creates or any other product supplied by FMC Australasia, including but not limited to (1) any obligation, liability right, claim or remedy in tort, whether or not arising from the negligence of FMC Australasia or its suppliers (whether active, passive or imputed) or of an FMC Accredited Pest Control Company; and (2) any obligation, liability, right, claim, or remedy for loss of or damage to any property. This disclaimer and release shall apply even if the express warranty set forth above fails its essential purpose.

**Disclaimer of loss not covered by Warranty where permissible:** To the extent permitted by law, FMC Australasia or its suppliers (whether active, passive or imputed) or of an FMC Accredited Pest Control Company shall have no obligation or liability, whether arising in contract or tort or otherwise, for damage to the FMC Termite Management System, property damage, loss of use, loss of revenue or profit, cost of capital, cost of substitute equipment, additional cost incurred by the beneficiary of this Warranty, or any other incidental, special, indirect or consequential damages whether resulting from the use, misuse or failure of the FMC Termite Management System except as expressly contained in this Warranty. This exclusion applies even if the above warranty fails its essential purpose and regardless of whether such damages are sought for breach of warranty, breach of contract, negligence, or strict liability in tort or under any other legal theory.

**Exclusion of implied conditions and warranties if permissible:** the extent permitted by law in the place where the property exists, or otherwise in New South Wales, any implied conditions or warranties that apply to this Warranty, the FMC Termite Management System or any part of it are excluded from this Warranty.

**Assignment:** Subject to the requirements set out in this clause, this Warranty may be assigned to a new owner of the property at the property address where the FMC Termite Management System is installed if the assignment is in writing, the Warranty terms and conditions have been complied with by the owner of the property at the property address and the new owner agrees that they will comply with the terms of this Warranty. For the avoidance of doubt, if the new owner of the property fails to comply with the terms and conditions of this Warranty, the benefits under the Warranty will not be available to the new owner. The new owner who is an assignee of this Warranty cannot take any benefit under this Warranty if the previous owner did not comply with the terms and conditions of this Warranty. If the previous owner of the property has a claim arising from when they owned the property under this Warranty, the new owner who is the assignee of this Warranty cannot make the same claim once the Warranty has been assigned. The assignment will only be effective against FMC Australasia if the assignor gives written notice of the assignment to FMC Australasia and the FMC Accredited Pest Control Company. FMC may transfer this Warranty, including the benefits, obligations and rights contained in this Warranty to another company at its absolute discretion.

**Dispute resolution:** Any dispute, controversy or claim arising out of, or relating or in connection with this warranty, including any question regarding its existence, validity or termination, must be resolved by arbitration, in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The number of arbitrators shall be one.

**Exercise of right or power:** No any single or partial exercise of any right or power preclude any other or further exercise of that right or power.

**Severability:** Any provision of this Warranty that is void or unenforceable may be severed from this document and the remaining provisions or parts of the provision of this document continue in force.

**Entire agreement:** The limited warranties provided herein are the exclusive contractual warranties given by FMC Australasia and supersede any prior, contrary, or additional representations, whether oral or written.

**Authority to represent FMC Australasia limited:** No one other than FMC Australasia can make representations or agreements that legally bind FMC Australasia and FMC Accredited Pest Control Companies are not agents, partners, contractors, authorised representative or employees of FMC Australasia unless that is specifically represented in writing by FMC Australasia.

**Variation in writing:** A variation of any term of this Warranty must be in writing and signed by the parties.

**Governing Law:** This Warranty will be governed by the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.