

## **INSOLVENCY PROTECTION SCHEME: INTRODUCTORY NOTES FOR GUIDANCE**

### **DURATION OF SCHEME**

The JIB-PMES reserves the right to withdraw the scheme at any time.

### **INTRODUCTORY GUIDANCE**

#### **DO:**

1. Keep alert at all times to the possibility of the engaging contractor becoming insolvent, and always insist on prompt payment.
2. Apply to the JIB-PMES for a claim form as soon as you receive notice or news of a liquidation, receivership or bankruptcy and return it complete as soon as possible and not later than 3 months after notice of the liquidation is given.
3. Ensure that contracts and/or orders including any separate orders for variations or extra work are evidenced in writing.
4. Make sure your participation is valid, that your APHC and/or NFB subscription is up to date (if applicable), that your operatives have a current grade card/JIB-PMES CSCS Registration card and that JIB-PMES Holiday Credit scheme Invoices are paid up-to-date and that you are in full compliance with all the terms and conditions of the JIB-PMES.
5. Make sure you ask for retention money held under the terms of a contract as soon as you are entitled to obtain release. If any defects need immediate action, put them right at the earliest date.
6. Contact your auditors if you make a claim under this scheme, as they are required to verify the authenticity of the debt.
7. Investigate dishonoured cheques immediately and ascertain the reason for non-acceptance by the bankers.
8. Retain all documents relating to the contract which may be needed as evidence of your claim.

#### **DON'T**

1. Allow amounts to remain unpaid beyond the stipulated period of payment.

#### **IF THEY DO, THEN:**

- (i) Press for payment
- (ii) If you are permitted to do so by the contract conditions, if 28 days have elapsed (and a liquidation etc., has not occurred), consider immediate notice of withdrawing your labour, and/or
- (iii) Commencement of legal proceedings by instructing your Solicitor with a view to issuing a Writ or Summons if the debt is not cleared.

**DON'T (Cont.)**

2. Allow invoiced amounts to remain un-cleared too long. If settlement has not been effected within the normal period of the account, press for payment.

**DO**

In any event before the lapse of three months, commence legal proceedings for any outstanding amounts, particularly if you believe a liquidation, bankruptcy or receivership is imminent.

Failure to comply with any of the above may render your claim invalid.

**NO CLAIM WILL BE ACCEPTED:**

1. In respect of any work other than plumbing and mechanical engineering services installation or maintenance work in scope of the JIB-PMES agreement.
2. For work conducted outside the territory covered by the scheme as defined under Clause 2.1 of the scheme.
3. If your Company is associated with, or in a group of companies including the engaging contractor.
4. In respect of uncertified work, on contracts falling for consideration under Clause 3.7 of the scheme.
5. If you have not established that a bankruptcy, receivership or liquidation has occurred. (In the case of a liquidation, no claim will be considered if this has been carried out for the purpose of reconstruction or amalgamation).
6. Unless your Company is a fully participating member covered by Clause 5 of the JIB-PMES Constitution and where applicable, Plumbing Pensions (UK) Ltd.
7. Unless you have been a full participant member of the JIB-PMES for 12 months prior to a claim being made.
8. For losses arising from wars, civil disturbances etc.
9. If a member has not previously carried out work for the defaulting main contractor.
10. Unless a formal written contract exists.
11. If the value of variations is not added to the contract as they occur.

**DEFINITIONS**

1. "JIB-PMES" means The Joint Industry Board for Plumbing Mechanical Engineering Services in England and Wales.
2. "APHC" means the Association of Plumbing and Heating Contractors.
3. "NFB" means The National Federation of Builders.

4. "The Schemes" means The Joint Industry Board for Plumbing Mechanical Engineering Services in England and Wales Insolvency Protection Scheme.
5. Engaging Contractors means any form of contractor as described under Clause 1.3 of the scheme.

### **INSOLVENCY PROTECTION SCHEME**

The Joint Industry Board for Plumbing Mechanical Engineering Services in England and Wales ("The JIB-PMES") hereby agrees to indemnify each of the JIB-PMES participant members ("the members") against losses (to the extent described in Clause 3 below) sustained by reason of the insolvency of the member's engaging contractor under a contract for plumbing and mechanical engineering services installation or maintenance.

#### **1. The operation of this indemnity is subject to the following definitions, provisions and limitations.**

For the purpose of this indemnity (unless repugnant to the subject or context):

- 1.1 **"Insolvency"** means in the case of an incorporated Company the commencement of winding-up under an order made by the Court or the passing of an effective resolution for a creditor's voluntary winding-up, or the appointment of a Receiver/Administrator for the management of the Company's affairs or being deemed under the Companies Acts unable to pay its debts. The date of publication of notice of a creditor's meeting is immediately preceded by a shareholder's resolution to wind-up the Company. In the case of an individual, or partnership insolvency means the committing of an act of bankruptcy and the making of any composition or arrangement with the creditors.

For the avoidance of doubt it is emphasised that a claim will not be considered in the case of a shareholder's voluntary liquidation or a liquidation carried out for the purposes of reconstruction or amalgamation.

- 1.2 **"Contract"** means any contract or sub-contract which is in the opinion of the JIB-PMES sufficiently evidenced in writing, and to which a participant member of the Board is a party. Without prejudice to the foregoing, "evidence" in writing" will normally be construed as meaning a written quotation or estimate for the work, accepted by a written order from the Engaging Contractor issued prior to commencement of the contract works.

Where the principal contract provides for variations then the value of the variations will be treated as part of the main contract providing they are added to the contract as they occur by an authorised variations order/s.

Where variations or extra work have been authorised after the commencement of a contract without express provision for the same, each variation will be treated as constituting a separate contract for the purpose of this indemnity and the requirements for evidence on writing, and claim limits will be construed accordingly.

- 1.3 **“Engaging Contractor”** means
- (i) any firm or company to which the member is a sub-contractor in the course of construction operations as defined by Part 1 of Schedule 13 to the Finance (No.2) Act 1945 or any statutory re-enactment, order or modification thereof and
  - (ii) any firm, company or individual who engages a member to perform plumbing and mechanical engineering services, installation or maintenance work (including private or domestic work) in scope of the JIB-PMES agreement.

The expression Engaging Contractor herein described above shall be construed to Clause 1.2 hereof.

- 1.4 **“Loss”** means any unpaid sum properly due to the member under a Contract (subject to Clause 3 hereof) to the extent to which the said sum is not liable under Contract to deduction or extinction by way of set off. ***In particular any Value Added Tax which is recoverable from H.M. Customs and Excise will be excluded from the definition of loss.***
- 1.5 Reference to the commencement of **“Legal Proceedings”** shall be construed as meaning either the service of a writ or summons or where the contract so provides, of a notice of arbitration. However the JIB-PMES may in its absolute discretion allow to be so construed the issue of instructions to a Solicitor to recover the loss followed promptly by legal action to recover it.
- 1.6 **“Claim”** means that portion of the “loss” defined in Clause 1.4 which is admissible for indemnity under the provision of Clause 3 below.

**2. This indemnity shall be subject to the following overriding conditions, limitations and restrictions:**

- 2.1 It shall only apply to work undertaken in England and Wales.
- 2.2 It shall only apply to participant members of the JIB-PMES.

“It shall apply in respect of any contract commenced whilst membership of either APHC or the NFB is in force and shall cease to apply to any contract commenced after the date of termination of membership. On termination of membership any claims on contracts in hand at the date of termination may be excluded from this indemnity at the discretion of the JIB-PMES.”

- 2.3 This indemnity relates to contracts commenced on or after the 1st day of July 1985, and will remain in existence until notice of cancellation is given by the JIB-PMES to its participant members.
- 2.4 The indemnity relates only to plumbing and mechanical engineering services, installation and maintenance work in scope to the JIB-PMES Agreement and in the case of a contract wherein other services are included, the portion thereof relating exclusively to plumbing and mechanical engineering services or installation etc. as aforesaid.
- 2.5 Any liability under this indemnity shall be conditional upon a claim being notified by the member in the manner hereinafter specified as soon as possible, but in any event not later than 3 months after the date of the relevant insolvency. Any recovery, dividend or distribution received in respect thereof by the member in the intervening period shall be deducted from the amount of any benefit available under this indemnity.

2.6 No indemnity shall arise hereunder where the member is part of a group of companies which includes the engaging contractor, or where the member is an associated company or has a Director in common with either of them.

**3. This indemnity shall only be given in the undermentioned circumstances and to the values as indicated below:**

3.1 Under no circumstances will any qualifying member recover more than one claim in any scheme year.

3.2 Every claim will be restricted to 75% of any loss arising on any one contract, subject to 3.4 below.

3.3 Notwithstanding the limit of 75% in 3.2 above, each claim will further be limited to 10% of the current basic annual wages at the appropriate graded rates for the total number of operatives for whom JIB-PMES holiday/sickness benefit stamps were purchased by the claimant and redeemed in the year prior to the Insolvency Protection Schemes.

3.4 The maximum amount subject to the restrictions under Clause 3 payable for any one claim is £12,000 i.e. 75% of £16,000.

3.5 Every claim arising under this scheme shall, further to the above restrictions, be subject to an excess of £250 which shall be deducted by the JIB-PMES from any sums payable for any one claim.

3.6 The JIB-PMES has placed an overall limit of £40,000.00 for the aggregate total of money that may be payable by way of claims in the current year.

Therefore final payment of claims may have to wait until all claims for the year have been agreed.

If, in total, the claims exceed the overall limit of £40,000 they will be distributed in appropriate proportions to all accepted claimants but not in excess of the overall limit.

The JIB-PMES may, at its sole discretion, in the interim make an initial payment of up to 20% of the loss when the claim is accepted.

3.7 In the case of a contract or nominated sub-contract requiring certification by an Architect or other agent, the member subject to the provisions of Clause 3.3 or any other relevant clauses, shall be indemnified to the extent of 75 per cent of the loss arising under any certificate issued prior to the date of the relevant insolvency subject to the aforementioned limits.

PROVIDED THAT any such certificate under the contract shall have been issued not more than 28 days before and not later than the date of the relevant insolvency unless within 42 days of the said date of issue of the certificate and before the said date of insolvency either:

- (a) the member has properly withdrawn his labour after giving due notice in accordance with the contract if the terms of the contract so permit, or
- (b) the member has commenced legal proceedings for the recovery of the certified amount.

For the avoidance of doubt it is declared that the value of any work done, materials supplied (whether measured or not) any claim for loss and expense unpaid at the date of insolvency and not included in any certificate as stated above, shall not rank as a loss for the purpose of this indemnity.

- 3.8 In the case of any other kind of contract the member shall be indemnified to the extent of 75 per cent of the loss subject to Clause 3.3 and any other relevant clauses.

PROVIDED THAT the member's relevant invoice or application under the contract shall have been submitted not more than three months before (and not later than) the date of insolvency, unless legal proceedings to recover the loss have been commenced by the member within three months of the date of the said invoice or application.

The JIB-PMES reserves the right to obtain confirmation thereof from a Receiver, Liquidator or Trustee in Bankruptcy.

- 3.9 Without prejudice to the above, 75 per cent of the amount of the member's interest in retention monies properly held under the terms of any contract at the date of insolvency will be reimbursed under this indemnity subject to the limits under 3.1 to 3.6 and any other relevant clause.
- 3.10 Where the member has received a cheque for the amount of any sum due in the circumstances described in Clauses 3.7 or 3.8 hereof, an extension of five working days will be allowed to the time limits referred to in Clauses if the cheque proves to have subsequently been dishonoured. Only one such extension will be admissible.

#### **4. In the event of a claim for indemnity the following procedure will apply.**

- 4.1 Any claim to be indemnified hereunder shall be made in a Claim Form obtained from and returned within 3 months to the JIB-PMES, who shall be entitled to require to be furnished with all information as to the existence and extent of the loss as a condition precedent to indemnity. The JIB-PMES's Address is Lovell House, Sandpiper court, Phoenix Business Park, Eaton Socon. Cambs. PE19 8EP. Initial requests for a Claim Form shall indicate the insolvent Engaging Contractor and (for identification purposes) the title of the Contract the subject of the claim. Each contract will be treated as a separate claim. The member must lodge any necessary proof of debt in the insolvency.
- 4.2 On the acceptance of the claim by the JIB-PMES under this indemnity the member will assign to the JIB-PMES the debt which constitutes the loss against which the member is indemnified under this scheme. Any excess recovered by the JIB-PMES over and above the claim shall be credited to the claimant member of the JIB-PMES at such time and in such proportions as the Board or its nominated body shall on its discretion decide, any costs and expenses of recovery having first been deducted therefrom.
- 4.3 The member shall provide an Auditors verification as to the authority of the debt from which the loss arose and as to there being no set off or counterclaim to prevent ultimate recovery of the relevant sum, and as to there being an insolvency as defined above. The JIB-PMES or its agents shall have the right to investigate all matters relevant hereto and the claimant member shall afford them full access to his records and information. The JIB-PMES and/or its agents shall have the right to recover from the claimant members any monies ultimately set off by a Receiver, Liquidator or Trustee in Bankruptcy against the claimant member's original claim which is dealt with under this indemnity.

- 4.4 The JIB-PMES reserves the right to reject a claim in the event of the member failing to provide the said information or where the member has failed to co-operate fully in any investigation undertaken by the JIB-PMES. Furthermore, any decision by the JIB-PMES in regard to any aspect of a claim shall be considered final and against which there can be no right of appeal etc. to any other party as all benefits under this scheme are at the complete discretion of the JIB-PMES.

No claim will be accepted where the claimant member is covered under any other Insolvency Protection Scheme or any other form of credit insurance policy.