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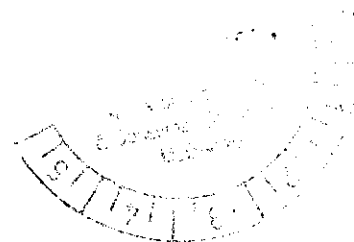
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Our ref: 172787-v01\W97\BCW\TJYJK3

23 May 2000

Mr Tom Fahy
Regional Director
Australian Competition and Consumer Commission
GPO Box 520J
MELBOURNE VIC 3001



Dear Mr Fahy

Molex Premise Networks Certified Installer Agreement and Certified Installer Warranty

We advise we act on behalf of Molex Premise Networks ("MPN") and we enclose draft Certified Installer Agreement and Warranty for your review. We consider that the Agreement and Warranty contemplate conduct of a kind referred to in subsection 47(6) and (7) of the Trade Practices Act ("the Act"). We give you notice of the proposed conduct in accordance with section 93 of the Act.

Our client is engaged in the business of manufacture, sale and distribution of copper and fibre connecting hardware for use in cabling systems. Our client has instituted a Constructors Certification Program in order to ensure the quality of goods manufactured and used in its name and in order to ensure the quality of the installation of those goods.

We refer you to subsections (b), (c) and (e) of clause 5.2 of the Agreement under which our client limits the availability of the Warranty to those products manufactured and installed by persons certified and approved by our client.

It is our client's intention to provide a Warranty for a 20 year period for the benefit of the customer and for the protection of the computer systems to which the cabling systems are connected. The Warranty is intended to protect the safety of MPN's customers and their computer systems. In order to provide such an extensive warranty our client must be able to control and monitor the quality of production and installation services at every stage of the supply process and in order to do so, it must limit the warranty to those products manufactured by our client and installed by persons approved by our client.

Furthermore, the Warranty is only available where the components used in the entire computer cabling system from end to end, are components manufactured by our client.

The requirement that customers use only those manufacturers and installers approved by our client as detailed in clause 5.2 of the Agreement, is intended for the benefit of the customer and to ensure that the customer receives the benefit of a 20 year warranty for the cabling system, rather than to create any compulsion on the customer to use specified manufacturers and installers.

We consider that the likely benefit to the public as a result of our client's proposed conduct outweighs any possible detriment to the public as a result of any breach of section 47(6) or (7) of the Trade Practices Act.

We look forward to receipt of notice in accordance with section 93(3) of the Act. Please contact the writer or Jodi Kirk of this office if you have any queries.

Yours faithfully

BAKER & MCKENZIE



Tim Young

Encl

Certified Installer Agreement

between

Molex Premise Networks

and

BAKER & MCKENZIE
Solicitors

Level 39, Rialto
525 Collins Street
MELBOURNE VIC 3000
Tel: (03) 9617-4200
Fax: (03) 9614-2103

Level 26, AMP Centre
50 Bridge Street
SYDNEY NSW 2000
Tel: (02) 9225-0200
Fax: (02) 9223-7711

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Certified Installer Agreement

This Agreement is made on the _____ day of _____, 2000.

Between

Molex Premise Networks Pty Ltd (ACN 079 002 707), the registered office of which is 86-100 High Street, Melton, Victoria.

("MPN")

and

("CI"), of

("Certifier")

Recitals

- A. MPN is engaged in the business of manufacture, sale, and distribution of MPN Products listed in the Catalogue and the Training Manual.
- B. The MPN Products are sold primarily through independent MPN distributors to Constructors who design, or work with designers to install cabling systems, using the MPN Products together with products of Approved Manufacturers for third parties.
- C. MPN has instituted a Constructors certification program to permit selected Constructors, which meet and maintain compliance with the requirements set out in this Agreement, and which are designated as MPN CI's.
- D. Customers are provided with a MPN Warranty. A MPN Warranty is not available to customers for systems designed and/or built by a Constructor not authorised by MPN to be a MPN CI prior to the relevant works.
- E. Certifier is a Constructor and seeks designation as a MPN CI.

Operative provisions

1. Definitions and Interpretation

In this Agreement, unless the context requires another meaning:

- (a) a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;

- (iii) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;

"Approved Manufacturers" means manufacturers which have been approved by MPN as the manufacturers of products suitable for use with MPN products for cabling systems;

"Breaking Party" means the party alleged to have breached this agreement by the terminating party;

"the Catalogue" means the MPN catalogue which sets out and describes the items manufactured by or for MPN for use by MPN CI;

"Certifier" means

"Commencement Date" means the date of appointment of Certifier;

"Constructors" means cabling system design and build persons or corporations;

"Cure Period" means the period of 30 days in which to use any breach of this agreement for the purposes of clause 10;

"Customers" means persons using cabling systems installed, tested and documented by MPN CI;

"Initial Term" means one year from the commencement date;

"Initial Training" means the period during which trainees undertake training to become MPN CIs;

"MPN" means Molex Premise Networks Pty Ltd;

"MPN CI" means a person who successfully completes the initial training;

"MPN Products" means copper and fibre connecting hardware for use in cabling systems consisting of those items in the catalogue;

"MPN Warranty" means an MPN 20 year product system performance and applications assurance warranty in the terms annexed to this agreement;

"Renewal Term" means successive one year terms commencing on the anniversary of the Commencement Date;

"Terminating Party" means a party asserting the existence of a breach under this agreement;

"Trade Secrets" means MPN's proprietary, technical information, marketing methods, customer lists, pricing methods and other Trade Secrets;

"the Training Manual" means the manual for use and installation of MPN Products, which manual has been prepared for use by Certifier and MPN Cis.

2. Appointment

2.1 Appointment

MPN will issue to Certifier within 30 days of the date of appointment as evidence of appointment in the form of Annexure 1. If the Certifier successfully completes the Initial Training within 45 days after the Date of execution of this Agreement by all parties, MPN must appoint the Certifier as an MPNCI. Certifier's appointment as a MPN CI is evidenced by a document, in the form of Annexure 1.

2.2 Authorised Certified Installer

The term of this Agreement, commenced on the Commencement Date. During the Term, Certifier is authorised to hold itself out as an authorised MPN CI.

3. Training and Familiarity with MPN Standards and Training Manual

3.1 Training of Certifiers

Certifier agrees to make available to MPN for training as certifiers, at a training site to be designated by MPN, at least two of each of its personnel designated as supervisor/job foremen, designers, and installation technicians or 10% of the Certifier's total field personnel for the Initial Training. These persons are to be available in groups of no more than fifteen and no less than ten for no less than three consecutive days (as agreed), for certification training by MPN in the marketing, sales, design, installation, testing, and documentation of MPN Products and other products approved by MPN for use in connection with MPN Products in the construction of certified cabling systems.

3.2 Annual Report

MPN will update and forward to Certifier on an annual basis a list of the personnel who are trained and certified by MPN for the design, installation, testing, and documentation of cabling systems for which the MPN Warranty is available

3.3 Training Manual

MPN will provide Certifier with the Training Manual and with any revisions or amendments of it from time to time.

3.4 Performance in accordance with Training Manual

Certifier must at all times ensure that its supervisors/foreman, designers and installation technicians observe the requirements and procedures specified in with the Training Manual, and comply with Standards specified in the Training Manual.

4. Use of MPN Products

In order for a customer to receive the benefit of MPN Warranty, Certifier must use new MPN Products acquired from an authorised MPN distributor, together with new components and parts made by Approved Manufacturers. Any such components and parts must not adversely effect the performance of the MPN Products in anyway including, in the design and installation of the cabling system. Certifier acknowledges that the quality and integrity of the cabling system and the compatibility of all components are a prerequisite to any liability of MPN under the MPN Warranty.

5. MPN Warranty

5.1 Form of Warranty

The MPN Warranty is in the form Annexure 2. MPN does not, make any representation or warranty to Certifier or to Customers with respect to MPN Products or cabling systems other than as set out in the MPN Warranty. Certifier must before commencing work on the design or installation of any cabling system, deliver to the Customer a copy of the MPN Warranty to inform the Customer of the form of the MPN Warranty and the limitations contained in it.

5.2 Prerequisites to Warranty

The MPN Warranty will be issued by MPN directly to the Customer for cabling systems designed, installed, tested and documented by Certifier after satisfaction of each of the following requirements:

- (a) The cabling system contains MPN Products in all applications for which a MPN Product is available;
- (b) Any components of the cabling system that are not MPN Products are manufactured by Approved Manufacturers;
- (c) The cabling system is designed, installed, tested, and documented in compliance with the Standards and all other requirements of the Training Manual;
- (d) The cabling system does not contain any components that have previously been used for any purpose;
- (e) A MPN CI must have completed in all respects tests, documentation, and a Registration Request, in the forms specified in the Training Manual, with respect to

the cabling system, and must have submitted such test documentation and Registration Request to MPN.

5.3 Technical Support

MPN will maintain a toll-free telephone line to provide technical support to Certifier for cabling system problem identification and resolution, and to provide warranty support to Customers. MPN must maintain a log of each inquiry and claim, and if MPN deems it appropriate forward to Certifier, a copy of the entries in such log pertaining to pending or threatened claims with respect to systems designed or installed by Certifier, for claim notification, claim investigation, and general information.

5.4 Resolution of Claims

MPN will use good faith and diligent efforts to perform all of its obligations under the MPN Warranties. If MPN determines that any claim under a MPN Warranty with respect to a cabling system designed or installed by Certifier results from a defect in design or installation or from a failure by Certifier to comply with the Standards or other requirements of the Training Manual, it will promptly notify Certifier of the claim and, if reasonably possible, MPN's estimate of the cost of remedying such defect. If the cost of remedying such defect as estimated by MPN is less than \$1,000.00, MPN has authority, immediately, to implement such remedy. If the cost of implementing the remedy is more than \$1,000.00, MPN will promptly notify Certifier of such claim, and Certifier within five business days must evaluate the claim and the claimed defect and commence any remedial work Certifier deems necessary. If the Certifier does not promptly and diligently undertake and pursue a remedy for the defect, MPN has the right to perform any services required under the MPN Warranty, including, without limitation, diagnosis of claimed problems and repair and replacement of components, either with MPN employees or by contracting with a third-party MPN CI to perform such services.

5.5 Certifier's responsibilities

If MPN is required under the terms of any MPN Warranty to make repairs to, or replace any components of, a cabling system designed or installed by Certifier resulting from a defect in design or installation or from a failure by Certifier to comply with the Standards or other requirements of the Training Manual, Certifier must within 30 days after receipt of a detailed invoice describing the costs of repair or replacement,

- (a) reimburse MPN the full cost of making such repair or replacement;
- (b) reimburse MPN its reasonable costs in assessing the warranty claim and diagnosing and solving any problem; and
- (c) pay to MPN, as reimbursement, for the administration of the MPN Warranty program, an additional 5% of such costs.

If Certifier elects to evaluate a warranty claim and successfully implements a remedy in accordance with Section 4.4, MPN is entitled only to reimbursement for the cost of its initial evaluation of the warranty claim.

5.6 Cooperation

Certifier and MPN acknowledge that it is in their best interests to work together in a cooperative manner to resolve any claims that arise under the MPN Warranties involving Certifier, MPN, or manufacturers approved by MPN, and to preserve and enhance the goodwill of their respective Customers. Certifier and MPN will seek immediate resolutions to any MPN Warranty claims, postponing, if necessary, the determination of relative responsibility of Certifier and MPN for the cost of resolving claims.

5.7 Warranty Request Form

By completing a Warranty Request Form for a certified cabling system, Certifier is representing and warranting to MPN that:

- (a) the cabling system has been designed, installed, tested, and documented in accordance with the Standards and other requirements of the Training Manual;
- (b) that the design, installation and testing of the cabling system have been performed by Certifier in a good and workmanlike manner, consistent with the highest standards prevailing in the industry;
- (c) the cabling system contains MPN Products in all applications for which a MPN Product is available;
- (d) no used MPN Products or used products of any other manufacturer have been incorporated into the cabling system;
- (e) all design, installation, testing and documentation of the cabling system by Certifier has been performed by Certifier's personnel trained in accordance with the requirements of this Agreement; and
- (f) that Certifier has provided the Customer with the form of MPN Warranty in accordance with clause 4.1 and has made no warranties, oral or written, to the Customer with respect to the cabling system or any component of the system except as provided in this Agreement. The warranties of Certifier set out in this clause 4 are effective for a period of 20 years from the date of this installation, unless modified in writing by MPN.

5.8 Notification of defects

If a Customer advises Certifier of any claim as potential claim under a MPN Warranty, or advises Certifier of any alleged defect or failure to perform of a cabling system covered by a MPN Warranty, Certifier must notify MPN of such claim or alleged defect or failure within 48 hours of becoming aware of it. Certifier and MPN will consult as to the most appropriate means for dealing with the claim. Certifier must at MPN's option, either:

- (a) dispatch its personnel trained in accordance with the terms of this Agreement to diagnose the alleged defect or failure, and to advise MPN in writing specifying test procedures, results, and conclusions, or

- (b) provide MPN access to the relevant cabling system for purposes of diagnosis, repair or rectification of the failure or defect by or at MPN's direction.

5.9 Limit of Warranty

The only product warranty by MPN is the MPN Warranty referred to in Clause 4.1. The MPN Warranty is given by MPN to the Customer, and Certifier is not entitled to any benefit of the Warranty except as specifically set out in this agreement. MPN does not give any other assurance nor make any other representations or warranties of any kind with respect to any product. Any warranties implied by law are incorporated into this agreement to minimum extent permissible at law.

6. Limitation of Liability

MPN and its affiliates are not liable to Certifier, its affiliates, successors, assigns, customers or to any other customer, person or entity to whom Certifier provides a cabling system using MPN Products and/or parts or components of any Manufacturer Approved:

- (a) for loss of time;
- (b) inconvenience;
- (c) loss of use of a cabling system or any of its components or of any other product or service;
- (d) for property damage or injury to person or property;
- (e) for any other indirect, incidental or consequential loss or damage arising out of this agreement or any obligation arising from this agreement; or
- (f) from the use or performance of any cabling system using, in whole or in part, MPN Products or parts or components of any manufacturer approved or accepted by MPN, whether in an action for or arising out of breach or warranty, breach of contract, delay, negligence, strict liability, or otherwise.

7. Patents, Trademarks, Trade Names, and the Like

7.1 Patents and Trademarks

Certifier must at all times respect all patents, trademarks and/or copyrights of MPN, and will except as specified below, market and/or distribute the MPN Products solely under MPN's trademark and trade name.

7.2 Waiver of rights to registration

Certifier waives any claim or right to any registration with respect to any of MPN's patents, trademarks or copyrights.

8. Secrecy/Protection of Goodwill

8.1 Confidentiality

In the performance of the terms and conditions of this Agreement, MPN may reveal to Certifier, or Certifier may come to know or have access to MPN's Trade Secrets. Certifier acknowledges that the Trade Secrets are highly confidential, that revelation to, discussion with or display to third parties or entities could result in damage to MPN's business and good will. Certifier agrees it will not, without MPN's written consent, reveal the Trade Secrets to any third party, or use such information for any purpose except as authorised in this Agreement. Certifier must take all reasonable precautions to prevent access or discovery of Trade Secrets by third parties. Certifier's obligation not to divulge the Trade Secrets to anyone continues for a period of three years after termination of this Agreement.

8.2 Compliance with MPN Rules

Certifier agrees it will comply at all times with any rules or regulations provided by MPN with respect to the use of MPN Products, trademarks and trade names. Certifier will not publish or cause to be published any statement, or encourage or approve any advertising or practice, which might mislead or deceive any parties or might be detrimental to the good name, trademarks, good will or reputation of MPN or MPN Products. Certifier agrees, to withdraw any statement and discontinue any advertising or practice deemed by MPN to be determined, on request by MPN.

8.3 Damages for Breach

Certifier agrees that any breach by Certifier of this clause 7 will result in substantial incidental and consequential damages to MPN and agrees that MPN is entitled, in addition to all other remedies available to MPN in the event of such breach (including but not limited to injunctive relief), to recover from Certifier all incidental and consequential damages suffered by MPN together with costs including legal fees incurred by MPN for enforcement of the provisions of this clause.

9. Relationship of Parties

Nothing in this Agreement constitutes Certifier as a partner, employer, or employee of MPN, and neither party has the authority to bind the other in any respect. Each party remains an independent contractor responsible for its own actions.

10. Term/Termination

10.1 Term

This Agreement remains in full force and effect for the Initial Term and will be automatically renewed for the Renewal Terms unless terminated in accordance with this Section.

10.2 Event of Termination

This Agreement terminates upon the occurrence of one or more of the following events:

- (a) At any time on 30 days' prior notice from either party, stating that party's intention to terminate this Agreement. Termination in this event is effective at the conclusion of the 30 day period; or
- (b) At any time, for material breach of this Agreement, except that the Terminating Party must notify, in writing, the other Party (the "Breaching Party") of the existence and nature of the Breach, and offer to the Breaching Party the Cured Period to cure the breach. Termination is effective, if no cure or inadequate cure is effected within the Cure Period, on expiry of the Cure Period; or
- (c) At any time on written notice, effective immediately, by either party if the other party makes an extraordinary arrangement with its creditors, generally commits an act of bankruptcy, goes into liquidation or winding-up, has execution or distress levied on any of its assets, or becomes unable to pay its debts, as they fall due. Such party must promptly and fully inform the other party of the imminence or occurrence of any event described in this paragraph.

10.3 Continuing Obligations

Termination of this Agreement does not prejudice or otherwise affect the rights or liabilities of the parties with respect to the MPN Products previously sold in accordance with this Agreement. Termination does not relieve the parties from any obligations imposed by the provisions of this Agreement which are expressed to survive this Agreement or any liability for damages resulting from breach of such provision.

11. Benefits/Assignability

Certifier must not assign its rights or delegate its obligations under this Agreement. Any such assignment or delegation is void.

12. Integration

This Agreement embodies the entire understanding of the parties with respect to the subject matter and may not be modified except in writing signed by the parties. There are no

promises, terms or conditions or obligations, express or implied, written or oral, other than those contained in this Agreement.

13. Waiver or Breach

No waiver or breach of any of the provisions of this Agreement is a waiver of any succeeding breach of the same or any other provision.

14. Severability of Provisions

The invalidity or unenforceability of any term or provision of this Agreement does not affect the remaining terms or provisions which continue in full force and effect.

15. Arbitration/Choice of Law

15.1 Arbitration

The parties submit all controversies, claims, and matters of difference to arbitration in Victoria, Australia in accordance with the Commercial Arbitration Act 1984. This submission and agreement to arbitrate is specifically enforceable. Without limiting the generality of the provisions of this clause 14.1, the following are considered controversies for this purpose:

- (a) all questions relating to the breach of any obligation, warranty or condition, or relating to the termination of this Agreement;
- (b) all questions relating to representations, negotiations and other proceedings leading to the execution of this Agreement;
- (c) failure of either party to deny or reject a claim or demand from the other party; and
- (d) all questions as to whether the right to arbitrate any question exists.

Arbitration may proceed in the absence of either party if notice of the proceeding has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Any awards are final and binding on all parties.

15.2 Governing Law

This Agreement is governed by an interpreted in accordance with the laws of the State of Victoria, jurisdiction and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

15.3 Costs

Any costs incurred by the parties in connection with any arbitration are to be borne by the parties unless the arbitrator makes an award for payment of costs.

16. Notices

All notices, consents, requests and other communications permitted or required by the terms of this Agreement must be given in writing, faxed or posted, postage prepaid, certified or registered, return receipt requested, and are deemed given upon the sender's written confirmation of receipt of faxes and as of the day received by the addressee when sent by certified or registered mail. Notices must be addressed as follows:

If to Molex Premise Networks: Molex Premise Networks
 60-78 Abey Road
 Melton, Victoria
 Attention: Warranty Program Manager
 Facsimile: (03) 9971 7199

If to Certifier:
Attention:
Facsimile:

Executed as an Agreement.

For and on behalf of)
Molex Premise Networks Pty Ltd)
in the presence of:)

Signature of witness

Signature of **Molex Premise
Networks Pty Ltd**

Name of witness (please print)

Signed by)
)
in the presence of:)

Signature of witness

Signature of

Name of witness (please print)

Molex Premise Networks

(Company)

By:
Its: Warranty Program Manager
Date:

By:
Its:
Date:

Molex Premise Networks Certified Cabling System Global Warranty Program

Warranty Coverage – 20 Years

Molex Premise Networks warrants the following for a period of **20 years** from the date of issue of the Registration Certificate to the end user:

1. **Component Warranty**

All components of the Molex Premise Networks Certified Cabling System are free from manufacturing defects in material of workmanship, under normal and proper usage.

2. **System Performance Warranty**

The links/channels of the Molex Premise Networks Certified Cabling System will comply with the category of end-to-end performance which the system is certified to.

3. **Application Assurance Warranty**

The Molex Premise Networks Certified Cabling System is free from defects which prevent the operation of standards based applications/protocols over the category of end-to-end performance which the system is certified to. The applications/protocols are those recognised by standards bodies IEEE, ANSI, ATM Forum and sanctioned specifically for transmission over the category of cabling standards defined in EIA/TIA 568A, ISO IEC 11801, and ANZS 3080:1996.

Certified Cabling System Definition

A Molex Premise Networks Certified Cabling System is defined as an end-to-end Certified Cabling System comprised entirely of Molex Premise Networks approved passive connectivity products, which has been installed and commissioned by an authorised Molex Premise Networks Certified Installer and where all equipment used in the installation has been installed and tested in adherence to the practices specified by Molex Premise Networks and industry wide standards and complies with the registered category of end-to-end performance but expressly excluding any active equipment, public network interface, or terminal equipment.

Molex Premise Networks' Performance Commitment

If a Molex Premise Networks Certified Cabling System fails any of the parameters described in the warranty, Molex Premise Networks will determine its responsibilities and provide the remedies under this warranty. Any such repair or replacement will be warranted under the terms of this warranty for the remainder of the term of this warranty. Where a non-performance is solely a result of the failure of the Molex Premise Networks Certified Cabling System, the rectification of the system will be made at no cost to the end user. Molex Premise Networks will supply all components free of charge and pay labour costs (to such installation companies as Molex Premise Networks selects in its absolute discretion) associated with system fault diagnosis and rectification.

1. Components

If any components in the Molex Premise Networks Certified Cabling System are determined by Molex Premise Networks to have failed, and prevent conveyance of electrical signals, Molex Premise Networks will repair or provide replacement product, at its sole discretion, for the Molex Premise Networks Certified Cabling System to convey such signals.

2. System Performance

If the Molex Premise Networks Certified Cabling System does not comply to the category of end-to-end performance as originally certified, (under standards compliant test procedures) then Molex Premise Networks will repair the Molex Premise Networks Certified Cabling System or provide replacement product, at its sole discretion, for the Molex Premise Networks Certified Cabling System to comply with the certified end-to-end performance.

3. Application Assurance

If the Molex Premise Networks Certified Cabling System prevents the end user from operating an industry standard application or protocol then Molex Premise Networks will diagnose and repair or provide replacement product at its sole discretion to ensure the effective transmission of the relevant application or protocol.

Professional Installations

Molex Premise Networks Certified Cabling Systems are installed by industry professionals who undergo extensive training by Molex Premise Networks. All installations are thoroughly tested for compliance to industry standards, and reviewed by Molex Premise Networks Certification Program Centres. Molex Premise Networks also audits installations to ensure that all recommended installation practices are adhered to.

Global Warranty Program Limitations

- Repair or replacement of elements in a Molex Premise Networks Certified Cabling System by Molex Premise Networks or its designated Certified Installer is the exclusive remedy to be provided under this warranty other than those provided by law.
- This warranty is limited to the original end user for whom it was installed and is not transferable.
- This warranty is given in lieu of all other warranties, express, implied or statutory, to the extent permitted by law, by Molex Premise Networks and the manufacturers of all components of the Molex Premise Networks Certified Cabling System, including without limitation, the warranties of merchantability or fitness for a particular purpose. Neither Molex Premise Networks nor the manufacturer of any component of the Molex Premise Networks Certified Cabling System is liable for system down-time, inconvenience, disruption of business, property damage, punitive damages or any other incidental or consequential damages caused by any failure of the Molex Premise Networks Certified Cabling System or any component.

Not Covered

This warranty does not cover failure of a Molex Premise Networks Certified Cabling System or components resulting from actions or events beyond the control of Molex Premise Networks or the manufacturer of components, including, without limitation, alterations to the Molex Premise Networks Certified Cabling System, unauthorised or improper repairs, misuse, accidents, fire, water damage, and acts of God.

Other Rights

This warranty provides specific legal rights, and there may also be other rights which vary from locality to locality. This warranty will be expanded to the extent, and only to the extent, required by applicable local law.