



## IKO COMMERCIAL BLINDSIDE WATERPROOFING (BSW) LIMITED MATERIAL WARRANTY

Warranty Number: \_\_\_\_\_

### PERSONAL INFORMATION

Building Name: \_\_\_\_\_ Ph.: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Building Owner: \_\_\_\_\_ Ph.: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Waterproofing Contractor: \_\_\_\_\_ Ph.: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Province: \_\_\_\_\_ Postal Code: \_\_\_\_\_

IKO Commercial Applicator Number: \_\_\_\_\_ Surface Area Covered (Square Feet): \_\_\_\_\_

### WARRANTY PERIOD FOR TYPE OF SHEET MEMBRANE INSTALLED

Installation Date: \_\_\_\_\_ Warranty Term – 5 years Expiration Date: \_\_\_\_\_

Membrane: \_\_\_\_\_ (the "Product").

The terms and requirements of this Membrane Limited Material Warranty ("Warranty") apply to IKO Industries Ltd. ("IKO) and the original purchaser of the products who owns the property on which the products were installed (the "Owner").

#### WARRANTY

IKO hereby warrants to the Owner of the property on which the IKO products noted above (the "Product") have been installed as a below grade moisture barrier that the Products will remain free from any manufacturing defect resulting in interior moisture penetration to the structure for a period of 5 years following the date of installation (the "Warranty Period"), subject to the conditions and limitations listed below. This Warranty is applicable only to Products installed in Canada.

#### REMEDY

During the Warranty Period, IKO will supply replacement product for the defective Products less any costs previously incurred by IKO for the materials replacement of the Products.

#### LIMITATIONS

1. THIS WARRANTY REPLACES ALL OTHER ORAL OR WRITTEN WARRANTIES, LIABILITIES, GUARANTEES OR OBLIGATIONS OF IKO OF ANY NATURE WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER BY STATUTE, AT LAW OR IN EQUITY, AND IS LIMITED IN LENGTH TO THE WARRANTY PERIOD PROVIDED ABOVE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. IKO WILL NOT BE LIABLE FOR ANY ORAL STATEMENT OR OTHER WRITTEN STATEMENT ABOUT THE PRODUCTS OR BUILDING DESIGN, WHETHER SUCH STATEMENTS ARE MADE BY AN AGENT OR EMPLOYEE OF IKO OR BY ANY OTHER PERSON, OTHER THAN THE PRESIDENT OF IKO. IKO DOES NOT AUTHORIZE ITS REPRESENTATIVES, DISTRIBUTORS, CONTRACTORS, OR DEALERS TO MAKE ANY CHANGES OR MODIFICATIONS TO THIS WARRANTY.
2. IKO IS NOT RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER DAMAGES OF ANY KIND, INCLUDING ECONOMIC LOSSES AND DAMAGE TO THE OWNER'S PROPERTY OR THE CONTENTS LOCATED THEREIN, WHETHER FOR BREACH OF THIS WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHER CLAIMS BASED ON TORT OR FOR ANY OTHER CAUSE.



# COMMERCIAL

3. Some jurisdictions may not allow the exclusion of implied warranties or may determine the amount that a purchaser may seek remedies for under the implied warranties, and some jurisdictions may not allow the exclusion or limitation of incidental or consequential damages, so the above limitations may not apply to you. This Warranty gives you specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction.
4. The provisions of this Warranty are in addition to and not a derogation from the statutory warranties, rights, and remedies, if any, contained in any applicable consumer protection legislation.

## NON-TRANSFERABILITY

This Warranty applies to the original Owner and is not transferable in any manner whatsoever.

## CLAIM PROCESS

1. To obtain performance under this Warranty, the Owner shall notify IKO in writing by certified mail within 30 days following the discovery of the warranted defect. Notices should be sent to IKO Industries Ltd., ATTN: Warranty Services Department, 40 Hansen Rd. South, Brampton, ON, L6W 3H4. The Owner must provide proof of purchase to substantiate the original date of installation of the Products.  
The Owner shall provide free access to the area of the suspected defective Products for agents or employees of IKO to inspect the area, and to make whatever investigations or examinations they may consider appropriate.
2. No action for breach of this Warranty shall be brought later than one (1) year after any cause of action has accrued.
3. This Warranty may be enforced only if the purchaser has paid in full for all materials and services supplied for installation on the Owner's building.

## BINDING ARBITRATION

EVERY CLAIM, CONTROVERSY OR DISPUTE OF ANY KIND WHATSOEVER (EACH AN "ACTION") BETWEEN YOU AND IKO (INCLUDING ANY OF IKO'S EMPLOYEES AND AGENTS) RELATING TO OR ARISING OUT OF THE PRODUCTS OR THIS LIMITED WARRANTY SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION, REGARDLESS OF WHETHER THE ACTION SOUNDS IN WARRANTY, CONTRACT, STATUTE OR ANY OTHER LEGAL OR EQUITABLE THEORY. YOU AND IKO AGREE THAT ANY ACTION WILL BE ARBITRATED ON AN INDIVIDUAL BASIS AND THAT NO CLAIM(S) WILL BE CONSOLIDATED OR AGGREGATED WITH THE CLAIM(S) OF ANY OTHER PERSONS BY CLASS ACTION, CLASS ARBITRATION, IN A REPRESENTATIVE CAPACITY OR OTHERWISE. TO ARBITRATE AN ACTION AGAINST IKO, YOU MUST INITIATE THE ARBITRATION IN ACCORDANCE WITH THE ARBITRATION ACT, R.S.A. 2000, c. A-43, ALBERTA, AS MAY BE AMENDED; AND YOU MUST COMMENCE THE ARBITRATION AND PROVIDE WRITTEN NOTICE TO IKO BY CERTIFIED MAIL AT THE ADDRESS NOTED ABOVE, WITHIN THE APPLICABLE TIME PERIOD SET OUT IN THIS LIMITED WARRANTY. IF YOU PREVAIL ON YOUR CLAIMS IN THE ARBITRATION, IKO WILL REIMBURSE YOU FOR ANY FILING AND ADMINISTRATIVE FEES PAID BY YOU TO THE ARBITRATION ORGANIZATION. Some jurisdictions do not allow mandatory arbitration, so the above arbitration provision may not apply to you in those jurisdictions. An Action may also be referred to another arbitration organization if you and IKO agree in writing. IKO will not elect arbitration for any Action you file in court in which you agree not to seek to recover more than \$25,000, including attorneys' fees and costs, so long as the claim is individual and pending only in that court. You may also reject this arbitration provision by notifying IKO in writing within 45 days after the installation of the Products or the valid transfer of this Limited Warranty to you. If any portion of this arbitration provision is not enforced in the arbitration, then either you or IKO can file a lawsuit in court to adjudicate the arbitrability of the Action and the enforceability of the portion of the arbitration provision at issue.

## CONDITIONS AND EXCLUSIONS

1. IKO's liability shall apply only to interior moisture penetration to the structure resulting solely from the defectively manufactured Products and from no other cause. Without limiting the generality of the foregoing, IKO shall have no liability for any damage resulting from:
  - a. any damage that occurs during or after any improper application process, including one that fails to follow IKO's specifications and application instructions in effect at time of installation, and approved building practices, or
  - b. structural defects, settlement, distortion, cracking, or failure of substrate or the underlying building structure, or inadequate performance of products not manufactured or sold by IKO, or
  - c. any damage if the building is altered after initial installation of the Product, whether any such alteration is by structural additions, changes, or replacement or equipment installations, or below ground construction projects of any kind, or
  - d. any change in the use of the building or a change in the technology associated with the processes carried on within the building from those for which it was originally designed, or
  - e. inadequate drainage or structural requirements as set out in the applicable Building Codes for the jurisdiction in which the building is constructed, whether it involves the building or surrounding areas of the property, or
  - f. condensation originating inside the structure, or moisture from any opening or source for which the Product has not been applied as a waterproofing layer,
  - g. leaks caused by penetrations or construction work following the installation of the product; or
  - h. any damage caused by Acts of God, civil insurrection, war, riot, vandalism, or
  - i. exposure to the chemical attack from any chemical materials including but not limited to greases, solvents, oils, or other chemicals.
2. In furtherance of and not in limitation of the foregoing, IKO will have no liability under this warranty for: (a) any damage to the interior or exterior of any building or any property contained therein; (b) any costs incurred for replacement not authorized in writing by IKO; (c) any damage caused by any cause other than a manufacturing defect; (d) any costs related to excavation, or the removal and replacement of any materials which may be covering the Products, in order to investigate a claim, or disposal of Products or covering materials arising from a reported claim; or (e) any costs related to the removal of any asbestos present in the structure upon which the Products are installed.
3. In all cases, the replacement Products are warranted only for the remainder of the original Warranty.
4. IKO reserves the right to discontinue or modify any of its Products, without notice to the Owner and shall not be liable to the Owner as a result of this modification or discontinuance. IKO will have no liability in the event that replacement material may vary in comparison to the original product as a result of product changes.
5. The unenforceability of any provision stated herein will not affect the enforceability of any other provision that will remain in full effect.

Signature: \_\_\_\_\_

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