

# HyKote™ Limited Material Warranty

Installation Date \_\_\_\_\_

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Building Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Province \_\_\_\_\_ ZIP/Postal Code \_\_\_\_\_

Building Owner \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Province \_\_\_\_\_ ZIP/Postal Code \_\_\_\_\_

Installer \_\_\_\_\_ Phone \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Province \_\_\_\_\_ ZIP/Postal Code \_\_\_\_\_

IKO Commercial Applicator Number (if applicable) \_\_\_\_\_ Roof Area (Square Feet) \_\_\_\_\_

Select which HyKote Product has been installed:

HyKote 500     HyKote 900     HyKote 1000     HyKote 5000     HyKote Labor Sav'R     HyKote Sprayable Mastic

Warranty Term: 10 Years. Required: minimum 2 coats, each coat minimum 21-mil dry thickness.

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The terms and requirements of this Limited Material Warranty ("Warranty") apply to IKO Industries Inc. and IKO Industries Ltd ("IKO"), and the original purchaser of the products who owns the property on which the products were installed (the "Owner"), which terms contain mandatory binding arbitration provisions. This Warranty covers HyKote roofing products manufactured or sold by IKO.

## WARRANTY

IKO hereby warrants to the Owner of the property on which HyKote residential and/or commercial roofing products have been installed as part of a roof (such IKO products hereinafter referred to as the "Products") that the Products will remain free of any manufacturing defect resulting in water leakage for a period of ten (10) 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 the United States or Canada, or Products purchased from an approved IKO exporter.

## REMEDY

During the Warranty Period, IKO shall pay the reasonable costs, prorated as set out below, for the direct replacement materials only for those Products determined by IKO to be subject to warrantable coverage (and exclusive of all other costs including but not limited to metal flashings, metal work, ballast, or other materials supplied or manufactured by others) less any costs previously incurred by IKO for the replacement of the Products. Starting in the thirteenth (13th) month following installation of the Products, coverage applies on a prorated basis for the materials, reducible by 1/120 for each month of service provided by the Product prior to written notice to IKO being provided in accordance with the Claims Process provisions set out below.

## REMEDY

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 IN THE FACE HEREOF. IKO WILL NOT BE LIABLE FOR ANY ORAL STATEMENT OR OTHER WRITTEN STATEMENT ABOUT THE PRODUCTS OR ROOF 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.
3. Some jurisdictions may not allow the exclusion of implied warranties or may determine the amount, that a purchaser may seek remedies 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 AND MANDATORY BINDING ARBITRATION

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 Inc., **ATTENTION: Warranty Services Department:**

**IKO Industries Ltd.**  
40 Hansen Road South  
Brampton, ON L6W 3H4

The Owner must provide proof of purchase to substantiate the original date of installation of the Products.

2. The Owner shall provide free access to the area of the suspect IKO Product for agents or employees of IKO to inspect the area, and to make whatever investigations or examinations they may consider appropriate. The Owner must provide proofs of purchase to substantiate the original date of the IKO Product installation. No action for breach of this Warranty shall be brought later than one (1) year after any cause of action has accrued.
3. The Owner must show proof that the Products have been maintained and inspected annually.
4. The Owner must prove that water leakage has resulted solely from a manufacturing defect in the IKO Product or the Product's inability to withstand ordinary wear and tear by the elements and from no other cause.
5. **NOT APPLICABLE TO RESIDENTS OF QUEBEC: Every claim, controversy or dispute of any kind whatsoever (each an "Action") between the Owner and IKO (including any of IKO's employees and agents) relating to or arising from 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. The Owner 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 person by class action or class arbitration in a representative capacity or otherwise. To arbitrate an action against IKO, the Owners must initiate the arbitration, for US claims, in accordance with the Federal Arbitration Act to be administered by the American Arbitration Association and to be conducted by a single arbitrator in accordance with the rules of the American Arbitration Association; and for Canadian claims, in accordance with the Arbitration Act (Alberta) R.S.A. 2000, c. A-43 as may be amended. The Owner must commence the arbitration and provide written notice to IKO by certified mail at the applicable address noted above, within the applicable time period prescribed above. If the Owner prevails on its claim in the arbitration, IKO will reimburse the Owner for any filing and administrative fees paid by the Owner 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 the Owner files in court in which the Owner agrees 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. The Owner may also reject this arbitration provision by notifying IKO in writing within 45 days after the installation of the Products. 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 water leakage resulting solely from a manufacturing defect in the IKO Product or the Product's inability to withstand ordinary wear and tear by the elements 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 roofing structure, or inadequate performance of products not manufactured or sold by IKO, or
  - c) any damage if the roof is altered after installation of the Products, whether any such alteration is by structural additions, changes, or replacement or equipment installations (including without limitations, aerials, signs, water towers, fan housings, air conditioning equipment, television antennas and skylights), or
  - d) foot traffic on the roof, or from use as a storage area or recreational surface or for any other purpose for which it was not designed, or
  - e) 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
  - f) inadequate roof drainage or ventilation; or
  - g) infiltration or condensation of moisture in, through or around walls, coping, building structure or underlayment or surrounding material, or
  - h) leaks caused by fasteners; or
  - i) any damage caused by lightning, wind, gale, hurricane, tornado, tempest, hailstorm, ice storm, earthquake, flood, fire, explosion, impact of foreign objects or from abuse or mistreatment of the roof, civil insurrection, war, riot, vandalism, or
  - j) failure by the Owner to properly maintain the Products in accordance with good practice and the published maintenance information published by the manufacturer for the Products applied on the roof; or
  - k) exposure to the chemical attack from any chemical materials including but not limited to greases, solvents, oils, or other chemicals; or
  - l) any damage due to animals, birds, pests, vermin, or their waste products (e.g., bird droppings/guano); or
  - m) on roof assemblies, including but not limited to inverted roof assemblies, costs for removal of equipment and all overburden are also excluded; or
  - n) appearance, discoloration or staining of the Products.
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 repair or replacement not authorized in writing by IKO; (c) any damage caused by any cause other than a manufacturing defect; (d) any costs related to disposal; or (e) any costs related to the removal of any asbestos present in the roof to 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 color in comparison to the original product as a result of product changes or normal weathering.
5. The unenforceability of any provision stated herein will not affect the enforceability of any other provision that will remain in full effect.