

INNOVATION ON GLASS PTY LTD

Product as



GCP PAINT SUPPLIES PROTECTIVE COATINGS PERFORMANCE WARRANTY

1. PREAMBLE

- (a) G.C.P Paint Supplies (hereinafter, "**G.C.P**") is serious about the quality of its coating products, its service to the industry and its support of owners, project managers and the applicators who prepare surfaces and apply high performance protective coatings.
- (b) The following Warranty document outlines G.C.P's commitment to the support of their products and services; including the design, manufacture and distribution of coating materials, the selection of coating products for specific service exposures, the provision of advice and Project Management tasks related to protective coating projects and the on-going service to the involved parties on a through-life basis.
- (c) The following document encompasses all of G.C.P's support commitments, including the product quality and suitability assurances which are statutory and/or Common Law requirements under State and Commonwealth law.
- (d) The beneficiary of this Warranty is to note that there are specific and particular requirements which must be met and maintained for the Warranty to be actioned and preserved, and there are a list of exclusions and conditions which similarly have to be understood and acknowledged.
- (e) There are also a set of definitions and criteria for the Warranty to be invoked or to apply. These are defined and detailed in the "Agreed Measure" section, provided later in this document.
- (f) All parties need to understand and appreciate that there are many possible causes for a coating failure or shortfall in performance, whether a warranty claim or not is being invoked. Poor coating quality (as a manufactured product) or faulty selection of coatings are only two of a list of possible contributors, and these are the two issues over which the Warrantor has some direct control. Published studies have proven these to be the least likely causes, on an occurrence basis, of poor in-field performance of protective coatings.
- (g) For this reason, it is to be understood by the Owner that the coatings application contractor has historically had a greater chance of being the party that has been the largest contributor to the alleged problem, and the first port of call in the event that a problem appears to arise, should not automatically be the supplier of the coating products. G.C.P would advise, that if it is not immediately obvious what is the likely cause of the alleged problem, that both the coatings applicator and the supplier should be called in together to view the problem. This may entail the Owner undertaking an initial independent investigation prior to the two parties being invited to assist.

- (h) Further, G.C.P's position is that the coating products are innocent until proven guilty, NOT guilty unless proven innocent. This means that g.c.p will participate in an appropriate investigation to try and assist the parties to find out what may have gone wrong, but it is not g.c.p's duty to solely undertake or solely fund this investigation.
- (i) It is also not G.C.P's duty to investigate an alleged failure unless it can be clearly verified that all products in the coating system in the areas where the failure is suspected, were actually manufactured or supplied by G.C.P. Substitution of like coating products is not uncommon, and G.C.P reserves the right to charge for an investigation and any analysis work that results in proof that G.C.P products have not been used.
- (j) The request for a Project Warranty must always precede the commencement of the Project. A Warranty requested after the event, whereby G.C.P has had no opportunity to peruse the specification, comment on the selection of the applicator(s), or provide any random oversight to the works; will be restricted to the Common Law support of products liability only.
- (k) As a general rule, a Warranty will only be issued for a portion or percentage of the expected time to first maintenance of a coating system in an understood service environment, as provided by published generic coating life expectation tables. Specifically these sources include the AS/NZS 2312 coating system durability predictions, the ISO 12944.5 tables, and the Brevoort/Roebuck "Life to First Maintenance" tables, as published by NACE International. The Warranty Term is not the expected life span.

2. RECEITAL

- (a) G.C.P Paint System, a division of Innovation on Glass Pty Ltd (hereinafter identified as "**the Warrantor**") offers the Owner or Project Manager ("**the Owner**") to warrant the performance of the coating system(s), provided in written form in the Coating Schedules ("**the Coating Schedules**") set out in Appendix A attached to the Surface Preparation and Coating Application Specification, (the "**Template Specification**") as supplied for the project ("**the Project**") on the following terms and conditions:

3. FORM OF GUARANTEE

- (a) The Warrantor warrants that the coatings applied to the nominated surfaces, either concealed from view or exposed internally within the building envelope for the Project works, which have been coated in accordance with the Template Specification (or a similarly detailed Project Specification reviewed and approved by G.C.P) in conjunction with the Coating Schedules prepared by G.C.P specifically for the Project; will protect the surfaces to which the said coatings have been applied against corrosion and premature breakdown for a period of **10 years** from the Commencement Date in accordance with the Agreed Measure.
- (b) The Warrantor warrants that the coatings applied to Glass exposed externally to the building envelope for the Project works, which have been coated in accordance with the Template Specification (or a similarly detailed Project Specification reviewed and approved by G.C.P) in conjunction with the Coating Schedules prepared by G.C.P specifically for the Project; will protect the surfaces to which the said coatings have been applied against corrosion and premature breakdown for a period of **10 years** from the Commencement Date in accordance with the Agreed Measure.

4. EXTENT OF GUARANTEE

- (a) The Guarantor will provide replacement coating materials, as may be necessary to repair any Defective Areas in accordance with Clause 6. Provision of replacement coatings will be for the life of the Warranty, although after 30% of the Warranty Term has expired, the obligation for the provision of coating product will diminish uniformly at a rate equal to 15% for each 10% of the Warranty Term that passes. This "sliding scale" is designed to approximate the normal wear and tear that the coating and its protective properties will experience. The provision of labour is restricted to that which is required under Common Law to rectify any proven defect in the coating material.
- (b) Throughout this document the words "Defective Areas" shall mean an area, or an aggregate of areas on any contiguous member or item, where inspection and/or testing shows that failure of the coatings from each other or from the substrate has occurred, which exceed any of the trigger points of the Agreed Measure.
- (d) The Warrantor may undertake a coatings audit/inspection at regular intervals (suggested to be biannually) and will instruct the Owner as to the nature and extent of any maintenance required to be undertaken by the Owner at his/her own cost.

5. WARRANTY COMMENCEMENT AND DURATION

- (a) This Warranty shall commence on the first of the following dates to occur ("the Commencement Date") being either:
 - (i) The date the of completion of application of the coating system to the project or where the project is coated in sections.
 - (ii) The date of completion of the application of the coating system to each section of the project ("The Commencement Date")
- (b) The Warranty Period will terminate at the end of the nominated number of years, (as set out hereunder) from the Commencement Date, (the "Termination Date"); and shall not be extended if repairs are carried out under this Warranty or otherwise.
 - (i) For internal surfaces, (as nominated or defined in the appropriate Coating Schedules) the Warranty Period shall be 10 years.
 - (ii) For external surfaces, (as nominated or defined in the appropriate Coating Schedules) the Warranty Period shall be 10 years.
- (c) In the event of a sale, lease or disposal of the asset or Project by the Owner, howsoever eventuating, this Warranty shall terminate at this time, unless all parties to the Warranty agree in writing to the transfer. This Warranty is not otherwise transferable or assignable.

6. CONDITIONS OF THE WARRANTY

- (a) The Warrantor shall not be liable unless:
 - (i) The Template Specification (or a similarly detailed Project Specification reviewed and approved by G.C.P) in conjunction with the Coating Schedules prepared by G.C.P specifically for the Project set out in the contract documents or subsequent written communication from the Warrantor; have been strictly followed.
 - (ii) Any surfaces and coatings damaged during handling, stacking, transport, storage, erection or commissioning on the Project are repaired to the Warrantor's satisfaction.

- (iii) The Owner obtains a valid warranty on workmanship from the Coating Contractor(s) to the Project, for a term of 100% of the applicable term in years of this Warranty.
 - (iv) The Warrantor signs and actions the Warranty at the satisfactory completion of the post-commissioning inspection and audit.
 - (v) All coating products and related items or services supplied by the Warrantor in connection with the Project have been paid for in full, irrespective of whether they were to the Owner's account or the Coating Contractor's account. If payments due to the Warrantor for coating products or related items are more than 120 days overdue, this Warranty shall be considered null and void.
 - (vi) The Owner owns, operates and maintains the coated asset with the best level of care and attention throughout the Warranty Period, and commits to and undertakes a regular inspection of the coated surfaces at intervals of not greater than 24 months, and performs the necessary touch-up and repairs using a qualified and experienced coating application contractor at the Owner's cost.
- (b) The Warrantor shall not be liable for:
- (i) Damage to the coating system or failure of its ability to perform its intended task arising from external causes outside the Warrantor's control such as, but not limited to: normal wear and tear, abrasion, erosion, damage caused by bolt torquing or other fasteners, welding or other heating, pollution, impact or mechanical damage, structural or fabrication defects, incomplete or failed welds, inaccessible areas, movement in or deterioration of the substrate, poor engineering design and/or detailing, areas of ponding for atmospheric coating systems, inadequate ventilation, exposure to unsuitable chemicals or mixtures (including liquids and/or gases), hydrostatic pressure, electrolytic damage, stray electrical current, incorrect cathodic protection (including potentials greater than 1.1 volts direct current), dissimilar metals in electrical or physical contact, incorrect cleaning, incorrect use, non compatible substrates, neglect, fire, explosion, radiation, collision or other accident, acts of God, wars (whether declared or not), riots, civil commotion, vandalism or other malicious damage, industrial action, adverse weather conditions (such as, for example, hail storms, bushfires, freezing conditions, sandstorms, cyclones), and the like.
 - (ii) Surface areas because of their physical shape, characteristics or configuration present special difficulties in effecting the specified surface preparation and/or satisfactory coating application such as, but not limited to, ladders, ladder platforms, handrails, bolts, pipe fittings, pipe flanges, attachments, cleats, small surface area equipment and the like.
 - (iii) Deterioration of any part of the coating system caused by repairs, modifications or installation work carried out on the substrate after the Commencement Date.
 - (iv) Deterioration which includes chalking and/or colour change of non-colourfast coatings.
 - (v) Any indirect or consequential damages or loss of any nature, including loss of earnings, damage, losses and expenses such as but not limited to: demurrage, loss of time, expenses due to the Owner's employees, agents, operators or sub-contractors, loss of profits and all claims by third parties against the Owner or the Warrantor.
- (c) The Warrantor shall have no obligation to perform, undertake or fund any coating repairs if there is any other form of insurance cover held by the Owner or the Main Contractor, (e.g. Builders' All Risks Insurance, or Project Construction Insurance) which could be applicable to any potential claim, whether in whole or in part.

- (d) This Warranty and the Owner's rights under this Warranty are extended to the Owner alone. The Warrantor's name and details of this Warranty are not to be used in any warranty given to other parties by the Owner. The Owner shall ensure that its principals, agents, representatives, customers or contractors; do not claim, represent or imply that this Warranty and the Owner's rights extends to or is available to anyone other than the Owner. This condition shall constitute part of the Terms of this Warranty and the Owner's rights, and any violation by the Owner or its representatives or agents in this regard, shall release the Warrantor from all obligations hereunder.

7. CLAIMS AND REPAIRS

- (a) The Owner shall notify the Warrantor in writing of any issue felt by the Owner to be a possible claim under the Warranty by letter, email or facsimile, giving brief details of the nature of the defect and the circumstances in which it was discovered including the date of detection. Unless this notice is received by the Warrantor within 30 days of the date of detection, all claims may be declined. If the Warrantor desires to inspect the area upon which a claim is being made, access shall be made available for such inspection within 30 days of receiving the Guarantor's request at the owners his or her costs.
- (b) If the Owner makes any claim under this Warranty it shall provide evidence to the Warrantor to support that claim and shall provide evidence that such defective areas were caused by circumstances other than those excluded under Clause 8(a) or Clause 8(b).
 - (i) Such evidence shall include written verification that the Warrantor's coating products have actually been used on the allegedly defective areas, and the identity of the Coating Contractor who performed the particular work in question. On a Project where multiple coating application companies have been used, this may require a review of the processing or application records to identify the work area, item or mark number.
 - (ii) The Warrantor reserves the right, at all times, to verify the identity and the supplier of the coating products used in the allegedly defective areas, by the use of IR spectroscopy or any other means, prior to acknowledging a claim under the Warranty. This is to specifically ensure that the Warrantor's products have been used exclusively on these areas.
- (c) No claim upon the Warrantor shall be effective unless it is communicated to the Warrantor in writing, signed by a Company Director or General Manager representing the Owner.
- (d) The Warrantor will communicate in writing, its acceptance (in part or in full), or its rejection of any claim under the Warranty. No verbal or other implied method of acceptance will be binding upon the Warrantor.
- (e) Repairs under this Warranty may be carried out only after consultation with the Warrantor. Repairs to be carried out during the Warranty Period or under the Warranty by any third party (other than by the original Coating Contractor) shall be made only after written consultation with the Warrantor.
- (f) The Warrantor is entitled to control, inspect and/or oversee coating repair work, the subject of a Warranty claim, which is to be carried out in accordance with its specification and instructions.
- (g) The Warrantor will use its best endeavours to ensure that coatings required for repairs are available as soon as practicable at the place where the repairs are to be carried out but does not assume liability for delay in this respect. Coating products different to those used on the original work, may be specified for any repair work, at the sole discretion of the Warrantor.

8. INDEMNITY

- (a) The Owner agrees that it will at all times hereafter hold harmless and indemnify the Warrantor against all actions, claims, demands, costs, charges, expenses, damage and injury from any third party claims brought against the Warrantor of whatsoever nature and howsoever arising caused by or related to the coating system and/or the substrate, or any repairs carried out thereon; unless such damages or injury have been as a result of negligence or neglect by the Warrantor and can be attributed to no other cause.

9. GENERAL

- (a) If there is any conflict between the terms of this Warranty and the terms of the contract for the sale of the materials used in connection with the Project, the terms of this Warranty shall prevail.
- (b) Headings are inserted in this Warranty for reference only and are not intended to affect interpretations.
- (c) Any alterations or modifications to this Warranty (including any alterations or modifications to the Template Specification and/or the Coating Schedules or Repair Schedules set out in Appendix A) must be in writing and signed by authorised representatives of the Owner and the Warrantor.
- (d) To the full extent permitted by law, the Warrantor's liability under this Warranty shall be in substitution for all other liability in connection with the Coating System; and all other covenants and warranties, whether expressed or implied, are hereby excluded.

10. LAW AND ARBITRATION

- (a) This Warranty shall be governed by the law of New South Wales, Australia, and the parties agree to submit to the jurisdiction of the Courts of that State.
- (b) Any dispute arising out of this Warranty (or out of any further agreements to which this Warranty may lead) will be submitted to arbitration in Sydney, New South Wales, Australia. The arbitrator shall be appointed by mutual agreement between the parties or, failing agreement, by the President for the time being of the Law Society of New South Wales. The decisions of the Arbitrator shall be final and binding.

11. NOTICE

- (a) Any notice pursuant to this Warranty may be served either personally or by sending it by prepaid post, fax or email to the party to be served at its address last notified by it to the party serving the notice: Notice shall be deemed to have been given:
 - (i) upon delivery where delivered by hand;
 - (ii) on the second day after posting if sent by post; or
 - (iii) upon receipt by the sender of confirmation of due transmission without error, if served by fax, or by electronic message receipt confirmation, if sent by email.

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12. WARRANTY SIGNATORIES

(a) Project Name: _____

(b) This Warranty has been signed for and on behalf of the Warrantor, G.C.P Paint Supplies, by its duly authorised representative.

Name: _____ Signature: _____

Date: _____

(c) This Warranty has been signed for and on behalf of the Owner, _____
_____ by its duly authorised representative.

This Warranty and all its terms and conditions are agreed to and accepted in full.

Name: _____ Signature: _____

Date: _____

(d) Commencement Date of the Warranty:

(i) All surfaces: _____

(e) Termination Date(s) of the Warranty:

(i) Internal/enclosed surfaces: _____

(ii) External/exposed surfaces: _____