

PRODUCT WARRANTY APPLICATION

Client:

Project Name:

Project Address:

Contractor:

Description within structure:

Date of delivery:

Date of completion of waterproofing works:

This document certifies a product warranty for the above captioned object for the products (hereinafter referred to as the "PRODUCT") which are manufactured and shipped by KOSTER American Corporation (hereinafter referred to also as "the MANUFACTURER") set forth hereunder:

Products:

- 1.
- 2.
- 3.
- 4.
- 5.

The PRODUCT applied shall be warranted for a period of **1 year** (hereinafter referred to as the "WARRANTY PERIOD") after delivery of the PRODUCT.

SECTION 1 - WARRANTY

The MANUFACTURER warrants to ____ (here in after referred to as the "CONTRACTOR"), subject to the terms and conditions contained herein, that the PRODUCT shall be free from defects (as defined in Section 2 herein below) if properly shipped, stored, applied, cured and used under normal operating conditions for the designated WARRANTY PERIOD.

SECTION 2 – DEFECT

The term "DEFECT" or "DEFECTS" as used herein, shall mean ONLY: a deviance from the material properties that are defined in the MANUFACTURER's technical guidelines, in case such would lead to peeling, cracking, blistering, streaking, non-uniform discoloration, delamination of PRODUCT from the substrate and the passage of water through the substrate caused by error in formulation, manufacture or design of PRODUCT. DEFECT shall not be deemed to include, and this WARRANTY shall not be applicable to claims for changes in appearance such as staining, rust staining, or other discoloration or cosmetic changes, or inability of CONTRACTOR to achieve work quality as per the MANUFACTURER's recommendations, technical guidelines, inter alias.

The WARRANTY shall be applicable ONLY to DEFECTS which are (1) included under the definition specified in this Section, AND (2) are not caused by the items excluded in Section 4 herein.

SECTION 3 - CONDITIONS

The liability of the MANUFACTURER for the PRODUCT shall also be subject to, and conditional upon, the following terms and conditions:

1. Terms and conditions contained in the MANUFACTURER's technical literature or system recommendations concerning proper selection, application and use of the PRODUCT.
2. Strict compliance by the CONTRACTOR with the claims procedure set forth in Section 5 herein.
3. All payments in connection with purchase of the PRODUCT have been timely made by the CONTRACTOR.

SECTION 4 – EXCLUSIONS

This WARRANTY shall not apply to DEFECTS caused as a result of the following:

1. DEFECTS caused by failure to properly select or apply the PRODUCT.
2. DEFECTS resulting from normal wear and tear within the given environment of the building, or from misuse, or neglect of any person.
3. DEFECTS caused by falling objects, external forces, explosions, fires, riots, civil commotion, acts of war, terror, vandalism, radiation or other such similar occurrences - *force majeure*.
4. DEFECTS caused from exposure to abnormally high temperatures, abnormal moisture, abnormal pollution, mechanical damage, abrasive cleaning.
5. DEFECTS caused by the settlement, cracking, warping, expansion, contraction, deflection, or other movement of the deck, walls, foundations or any other part of the structure.
6. DEFECTS caused by damage to the PRODUCT due to repair, alteration, or modification of the substrate of structure.
7. DEFECTS caused by mechanical damage to the PRODUCT by furniture or equipment placement.
8. DEFECTS caused by overheating, freezing, or moisture contamination or other contamination detrimental to the PRODUCT because of improper shipment, improper storage, exposure to unsuitable chemicals or mixtures, or other misuse.
9. DEFECTS that arise in whole or in part from failure to select the appropriate PRODUCT, failure to properly prepare the surface for application of the PRODUCT, including removing grease, adhesives, old patch material, improperly applied compounds or other deleterious compounds that may prevent proper performance and/or adhesion of the PRODUCT, failure to adhere to the technical guidelines, labels, application instructions for material coverage, surface preparation, application, curing etc. as well as defects from PRODUCTS which were applied to defective or improper substrates, whether the substrate is improper at present or in the future, or due to conditions within the substrate itself, or defects arising from moisture above the substrate, such as flooding, leaking, or improper drainage.

SECTION 5 - CLAIMS

10. The CONTRACTOR shall notify the MANUFACTURER in writing within Five (5) DAYS of any DEFECT occurring within the WARRANTY period. Notice by FAX shall be deemed sufficient to comply with this requirement.
11. The MANUFACTURER shall be given full and complete opportunity, not interfering with the CONTRACTOR's activity, to inspect the coated surface, examine the alleged DEFECT, and review the CONTRACTOR's records and retained samples concerning the applied PRODUCT. The CONTRACTOR shall send photos and samples of the defective product and the coated substrate on request of the MANUFACTURER to the MANUFACTURER. The MANUFACTURER shall also get full access to constructive drawings of the defective construction member.
12. The CONTRACTOR shall furnish the MANUFACTURER with the date of DEFECT found in PRODUCT and must demonstrate that the alleged DEFECT is covered under the terms and conditions of this WARRANTY.

SECTION 6 - OBLIGATION OF THE MANUFACTURER IN CASE OF REPAIR

1. The MANUFACTURER'S SOLE OBLIGATION TO THE CONTRACTOR SHALL BE TO PROVIDE THE CONTRACTOR WITH SUFFICIENT ADDITIONAL PRODUCT, FREE OF CHARGE, TO REPAIR THE DEFECTS. In no event shall the MANUFACTURER be liable for costs, damages or expenses or any kind, such as without limitation, damage to the substrate, costs to relocate objects, economic losses, demurrage, incidental and consequential damages.
2. All repair work shall be performed by person, firms, or companies approved by the MANUFACTURER prior to any repair work. Repair or attempted repair of DEFECTS by person, firms, or companies not approved by the MANUFACTURER shall render this WARRANTY null and void, and the MANUFACTURER shall be relieved of any obligation to the CONTRACTOR thereafter.
3. The WARRANTY period shall not be extended from the event or occurrence if any repair is affected.



SECTION 7 - NON-TRANSFERABILITY

This WARRANTY and the CONTRACTOR's rights stipulated under this WARRANTY is extended to the CONTRACTOR alone as purchaser of the PRODUCT. This WARRANTY is non-transferable and non-assignable, and the CONTRACTOR shall not permit its agents, representatives, sub-contractors, distributors, or applicators, to claim or represent, to imply that this WARRANTY and the CONTRACTOR's rights under this WARRANTY extends to or is available to anyone other than the CONTRACTOR. This condition shall constitute a material terms of this WARRANTY and the CONTRACTOR's right under this WARRANTY, and its violation by the CONTRACTOR or its agents or representatives shall release the MANUFACTURER from all obligations stipulated herein.

SECTION 8 - EXCLUSIVE REMEDY: NO OTHER WARRANTY: LIMITATION OF LIABILITY

1. **THIS WARRANTY IS THE SOLE WARRANTY AND CONSTITUTES THE SOLE AND EXCLUSIVE REMEDY OF CONTRACTOR IN CONNECTION WITH THE PRODUCT.**
2. **The MANUFACTURER MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY REGARDING THIS PRODUCT. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND HEREBY DISCLAIMED AND EXCLUDED FROM THIS WARRANTY.**
3. **UNDER NO CIRCUMSTANCES SHALL THE MANUFACTURER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING LOSS OF USE AND LOST PROFITS OR OTHER CLAIMS.**

SECTION 9 - ARBITRATION

The parties hereto agree that all disputes and differences arising under this WARRANTY shall be resolved by binding arbitration in the Commonwealth of Virginia. The decision of the arbitrators shall be final. It may be enforced in any court having competent jurisdiction. The cost of arbitration shall be borne equally by the parties hereto.

SECTION 10 - NOTICES

All notices given under or pursuant to this WARRANTY shall be in writing and sent by registered mail, postage prepared, return receipt requested, to the party to whom such notice is required to be given.

SECTION 11 - GOVERNING LAW

This WARRANTY shall be interpreted and construed under and in accordance with the laws of Virginia, USA.

WARRANTY DISCLAIMER & REVIEW NOTICE

All applications are subject to review and approval by the KOSTER American Technical Department. Upon review, an appropriate warranty period will be assigned based on the submitted project information and system requirements. This document is provided for informational and preliminary evaluation purposes only and does not constitute a binding warranty. Any warranty coverage will be issued solely through formal written approval by KOSTER American Corp. following technical review of the completed application and supporting data.