

PROMINENT PAINTS WARRANTY TERMS AND CONDITIONS

1. Parties

This Warranty terms and conditions is entered into between:

- 1.1 Prominent Paints (Proprietary) Limited, registration number 1997/006763/07 ("**Prominent Paints**"); and
- 1.2 "**The Purchaser**", which for purposes of this Agreement shall include its employees, agents, subcontractors, officers, directors and representatives generally, collectively the "**Purchaser**").

2. Definitions and interpretation

2.1 In this Warranty, the following words shall bear the following meanings:

- 2.1.1 "**Applicator**" means the person mandated by the Purchaser to apply the Products;
- 2.1.2 "**CPA**" means the Consumer Protection Act 68 of 2008, as amended from time to time;
- 2.1.3 "**Paint Failure**" means the inability of the Products to perform in the intended manner or to the intended effect, caused by a material imperfection in the manufacture of the Products, when applied according to the Specifications and shall include chipping, flaking, peeling, blistering or excessive discoloration or fading of the Products, as more fully described in clause 5.2;
- 2.1.4 "**Parties**" means the parties to this Warranty, being Prominent Paints and the Purchaser;
- 2.1.5 "**Products**" means the products purchased by the Purchaser from Prominent Paints, as listed in the Specifications or technical data sheet;
- 2.1.6 "**Signature Date**" means the date of signature of this Warranty by the Party signing last;
- 2.1.7 "**Specifications**" means the description of the Products and any other information required to be stated therein by Prominent Paints, and instructions for their application by the Applicator.
- 2.1.8 "**Surfaces**" means the substrate defined in the Prominent Paints' technical data sheet.
- 2.1.9 "**Warranty**" means the Warranty set out in this document and any annexures attached hereto; and
- 2.1.10 "**Warranty Certificate**" means the document issued by Prominent Paints to the Purchaser in terms of clause 4.3.

2.2 In this Warranty, unless inconsistent with or otherwise indicated by the context:

- 2.2.1 words importing any particular gender include the other genders (i.e., the masculine, feminine and neuter genders, as the case may be); the singular

includes the plural and vice versa; and natural persons include artificial persons and vice versa;

- 2.2.2 any reference to "**person**" shall include a reference to an individual, a firm, a body corporate, a trust, an unincorporated association, government or a partnership and that person's legal personal representatives and successors in title.
- 2.2.3 if any definition contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision in the body of this Warranty, notwithstanding that it is only in a definition;
- 2.2.4 when any number of days is prescribed, the same shall be reckoned inclusively of the first and exclusively of the last day;
- 2.2.5 the rule of construction that the contract shall be interpreted against the Party responsible for the drafting of or preparation of this Warranty, shall not apply; and
- 2.2.6 the use of the word "**including**" followed by a specific example(s) shall not be construed as limiting the meaning of the general wording preceding it.

3. Extent of the Warranty

- 3.1 This Warranty is limited to cover the following Prominent Paints paint products on a Surface.:
 - 3.1.1 **7 Year Paint Film Warranty**; **Select Matt** – Interior walls only, **Select Wall and Ceiling** – Interior walls & ceilings only, **Select Sheen** – Interior & Exterior walls only, **Select Textured** – Exterior walls only, **Select Roof and Paving** – Exterior roofs only,
 - 3.1.2 **12 Year Paint Film Warranty**; **Premium Matt** – Exterior & Interior walls only, **Premium Satin Silk** – Exterior & Interior walls only, **Premium Textured** – Exterior walls only, **Premium Roof and Paving** – Exterior roofs only, **Premium Gloss Enamel** – Interior walls only, **Premium Non-Drip Enamel** – Interior surfaces only;
 - 3.1.3 **10 Year Paint Film Warranty**; **Ultra Matt** – Interior walls only, **Ultra Sheen** – Interior surfaces only, **Ultra Gloss** – Exterior & Interior surfaces, **Ultra Shield** – Exterior & Interior walls.
 - 3.1.4 **15 Year Paint Film Warranty**; **Neuklad** – Exterior walls only.
- 3.2 The Warranty shall only be valid and apply where:
 - 3.2.1 the total purchase price of the Product/s does not exceed R50 000.00 (fifty thousand rand) inclusive of VAT.; and
 - 3.2.2 the Purchaser has lodged confirmation of its Warranty with Prominent Paints within 30 (thirty) days of the purchase date of the products in accordance with clause 4.
 - 3.2.3 Each registration of the Warranty shall be limited to one invoice and one application address. The use of one invoice multiple times will not be allowed.

3.2.4 The Warranty shall only apply to the product/s purchased and applied within the Republic of South Africa.

4. Commencement and Duration

- 4.1 Subject to confirmation in terms of clause 4.3, this Warranty shall commence on the date that the Purchaser enters his/her personal and purchase details on the Prominent Paints website <http://www.prominentpaints.co.za> stating the purchase date of the Product/s ("**Commencement Date**") together with a completed evidence form which lists the actual Products purchased with the respective litres used and batch numbers. The Purchaser must keep the proof of purchase as per the terms and conditions therein. In order for this Warranty to be valid, this must be done within 30 (thirty) days of the purchase date of the product.
- 4.2 The Warranty shall be for a period as stated on the product and calculated from the Commencement Date ("**Warranty Period**").
- 4.3 The Prominent Paints' technical department will process the request and, If all the required supporting documentation and evidence as stipulated in the Prominent Paints website are submitted and found to be accurate and correct, Prominent Paints will issue the Warranty Certificate to the Purchaser.
- 4.4 The Warranty is not transferable.
- 4.5 Where any claim arises during the Warranty Period, the Warranty Period will not start afresh after settlement of the claim but will continue for the duration of the original remaining Warranty Period.

5. Prominent Paints' Warranty

- 5.1 Subject to the terms and conditions of this Warranty, Prominent Paints Warranty to the Purchaser that the Product will perform in the intended manner and have the intended effect, as described in the product's technical data sheet, for the duration of the Warranty Period (defined below).
- 5.2 Throughout this Warranty the words "Paint Failure" shall mean any of the following occurring:
 - 5.2.1 delamination of one coat of paint from another within a paint system specified by Prominent Paints or formalised in Prominent Paints' data sheet.
 - 5.2.2 Cracking of the paint film in accordance with ISO 4628-4:2003 when applied according to Prominent Paints' specification or technical data sheet.
 - 5.2.3 Blistering of the paint film that is not in accordance with ISO 4628-2:2003 when applied according to Prominent Paints' specification or technical data sheet.
 - 5.2.4 Failure related to adhesion loss or inter-coat adhesion failure in accordance with ISO 4624:2008 and ISO 2409:2008 in cases where Prominent Paints products have been used for the full paint system as per the specification or technical data sheet.
 - 5.2.5 Chalking of the paint film that is not in accordance with ISO 4628-6:2007 when applied according to Prominent Paints' specification or technical data sheet.

- 5.2.6 The Warranty allows for uniform colour change of exterior colours over time. This is a natural occurrence with exterior coatings when exposed to sunlight. However, the main constituent of the colour which is the hue shall be maintained during the life of the coating. Failure due to colour shall mean colour change that is not in accordance with ISO 105-A02:1993 (E). Some colours are not recommended for exterior use as per Prominent Paints' fandeck "Voice of Color".

6. Warranty Terms

- 6.1 This Warranty shall only be valid and applicable where:
- 6.1.1 application work has been done in accordance with the Specifications or the technical data sheet for the particular product;
 - 6.1.2 the Purchaser has followed the specified surface preparation and used the specified products for the surface preparation prior to the painting of the surface, as described in the Specifications or technical data sheet;
 - 6.1.3 the Purchaser has used the entire paint system specified by Prominent Paints, i.e. primer, undercoat and topcoat;
 - 6.1.4 the Product is used strictly for application as stated on the container, in the Specifications, technical data sheet and specified in clause 3.1; and
 - 6.1.5 the Specifications or technical data sheet of Prominent Paints have been followed correctly.
- 6.2 Application work shall include all elements of surface preparation prior to application of the coating, as well as the process of application.

7. Claims

- 7.1 Any claim made in terms of this Warranty shall be made in writing as soon as the Purchaser becomes aware (or should have become aware) of the Paint Failure, but in any event within 30 (thirty) days of the Purchaser discovering any defect, damage or failure which gives rise to a claim ("**Claim Notification**").
- 7.2 The Claim Notification shall include full details thereof, and shall set out the basis on which the Purchaser believes that Prominent Paints is liable in terms of the Warranty. Prominent Paints shall be entitled to inspect the alleged Paint Failure and Products used by the Purchaser in which the coating is alleged to have failed and to perform any tests in respect thereof and may do so either itself or by means of any person nominated by it. Prior to such inspection or testing, the Purchaser shall not be entitled to perform any repairs to or remove or tamper with any part of the Paint Failure, Products or coating.
- 7.3 The Purchaser shall provide a copy of the Warranty Certificate and the original and legible till slip or receipt as proof of purchase.
- 7.4 The Purchaser shall provide such further information as Prominent Paints may require, including details of environmental factors and inspection and repair records.
- 7.5 The Purchaser, at its own expense, may be required by Prominent Paints to return the defective Products (if any) to Prominent Paints' premises.

8. Liability

8.1 Subject to clause 8.2, and as soon as reasonably possible after Prominent Paints has determined if there has been a Paint Failure, it shall, in its sole discretion, either:

8.1.1 remedy such Paint Failure by providing replacement Products for the re-application thereof, as may be necessary for the Purchaser to repair the Paint Failure in full or in part; or

8.1.2 provide an alternative product if the product found to be in breach of the Warranty cannot be replaced.

8.2 To the extent that Prominent Paints elects to provide replacement Products to repair the Paint Failure in accordance with clause 8.1.1, the Purchaser shall be liable for all costs and expenses incurred in the application thereof, including any fees charged by the Applicator and/or any related labour costs.

8.3 Notwithstanding anything to the contrary contained herein, the liability of Prominent Paints shall reduce over the Warranty Period according to the sliding scale below:

Year	7 Year Paint Film Warranty	10 Year Paint Film Warranty	12 Year Paint Film Warranty	15 Year Paint Film Warranty
Year 1	Full Replacement	Full Replacement	Full Replacement	Full Replacement
Year 2 - 3	75% Replacement	80% Replacement	80% Replacement	85% Replacement
Year 4 - 5	50% Replacement	60% Replacement	60% Replacement	65% Replacement
Year 6 - 7	15% Replacement	40% Replacement	40% Replacement	45% Replacement
Year 8 - 10	Not applicable	10% Replacement	20% Replacement	30% Replacement
Year 11 - 13	Not applicable	Not applicable	10% Replacement	20% Replacement
Year 14 - 15	Not applicable	Not applicable	Not applicable	10% Replacement

8.4 The replacement cost shall be the cost of the Product as at the date of the Claim Notification. The Purchaser shall be liable for the balance of the replacement costs, which are not covered by Prominent Paints, as indicated in 8.2.

8.5 Prominent Paints shall not be liable to the Purchaser in any circumstances whatsoever for any indirect, special, contingent or consequential loss (including but not limited to loss of profits, loss of business or loss of revenue) sustained or incurred by the Purchaser howsoever arising. These limitations of liability shall apply regardless of the form of action, whether in contract, delict or otherwise and regardless of whether the Purchaser has been advised as to the possibility of such damages and/or losses occurring.

8.6 Notwithstanding anything to the contrary contained in this Warranty, Prominent Paints' maximum aggregate liability for any loss, liability, damage or expense of whatever nature that may arise in respect of this Warranty or the Products, shall in no event exceed the total purchase price of the Products to which the claim(s) relates.

8.7 Where any claim arises during the Warranty Period, the Warranty Period will not start afresh after settlement of the claim but will continue for the duration of the original remaining Warranty Period.

8.8 After the Warranty period, Prominent Paints no longer guarantees the Product.

9. Exclusions

9.1 The Purchaser shall have no claim under this Warranty and Prominent Paints shall not be liable for:

- 9.1.1 damage to the Product or coating arising from external causes outside Prominent Paints' reasonable control such as, but not limited to, welding or other heating, pollution (i.e. Salt spray and Acid Rain), mechanical damage, incorrect cleaning methods with incorrect cleaning detergents and equipment (i.e. excessive abrasion with abrasive pads), hydrostatic pressure, electrical or electrolyte damage, incorrect cleaning or incorrect use, neglect, fire, explosion, radiation, collision or other accident, acts of God, vandalism or other malicious damage, damage caused due to industrial action, and the like;
- 9.1.2 the failure of any Product or coating on any areas which because of their shape, characteristics or configuration, present special difficulties in application, preparation or coating e.g. ladders and ladder platforms, handrails, rivets and contact Surfaces of any kind;
- 9.1.3 the failure to correctly apply and/or use the Product in accordance with the Prominent Paints Specification or as specified in the technical data sheet;
- 9.1.4 the use of any non-Prominent Paint products with the specified Prominent Paints Products;
- 9.1.5 the deterioration of any metal as a result of any form of electrochemical action;
- 9.1.6 any indirect or consequential damages, losses and expenses such as but not limited to demurrage associated with coating repair work, loss of time, expenses due to the Purchaser's employees, agents, operators or sub-contractors, loss of profits and all claims by third parties against the Purchaser;
- 9.1.7 damage to the Product or coating arising from deterioration or movement of the substrate caused by any other substance or condition; and/or
- 9.1.8 failure of any coating as a result of moisture in the substrate, where moisture levels exceed 15% on concrete, cement plaster or any other substrate.
- 9.1.9 the use of the product on boundary walls, garden walls, and all freestanding structures.
- 9.1.10 Prominent Paints Warranty does not include damages, failure or defect of the Product resulting directly or indirectly from poor workmanship, application or surface preparation by the consumer, applicator or any other person or entity.
- 9.1.11 Exterior colours undergoing uniform fading. The lightness of the colour will show uniform change. This is a natural occurrence with exterior coatings when exposed to sunlight. However, the main constituent of the colour which is the hue will be maintained during the life of the coating. Some colours are not recommended for exterior use as per Prominent Paints' fandeck "Voice of Color"

10. Consumer Protection Act

- 10.1 This Warranty is not intended to override the provisions of the CPA, which shall at all times continue to govern the terms and conditions of any supply of Products between Prominent Paints and the Purchaser who is an individual consumer or a juristic person with an asset value or annual turnover less than the threshold published from time to time by the Minister of Trade and Industry under section 6 of the CPA ("**Exempt Transaction**").
- 10.2 To the extent that there is any conflict between this Warranty and the provisions of the CPA in relation to an Exempt Transaction, the applicable provisions of the CPA will prevail.
- 10.3 All the provisions of this Warranty will be deemed to be qualified to the extent required in order to ensure compliance with the applicable provisions of the CPA in relation to an Exempt Transaction and these terms and conditions must be interpreted and applied accordingly.

Notwithstanding any other provision of this Warranty, in relation to an Exempt Transaction, the Purchaser will have such rights and remedies as set out in the CPA, but only in accordance with the provisions of and time periods set out in the CPA.