

# Roof System Warranty Agreement

## Dricon<sup>®</sup> Fire Retardant Treated Wood

THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between ARCH WOOD PROTECTION, INC, whose address is 5660 New Northside Drive, Suite 1100, Atlanta, Georgia 30328, and \_\_\_\_\_ (“Builder”), whose address is: \_\_\_\_\_.

WHEREAS, Arch Wood Protection manufacturers Dricon<sup>®</sup>, a fire-retardant chemical, to be applied by Arch Wood Protection’s licensees to plywood and other wood products which are then sold by the licensee under the name Dricon Fire Retardant Treated Wood (“Dricon FRTW”). Builder wishes to purchase Dricon fire retardant treated lumber and plywood (“Dricon FRTW”) from licensees of Arch Wood Protection for use in roof construction, defined as the roof sheathing and all horizontally spanning components directly supporting the roof sheathing, and Arch Wood Protection wishes to encourage the purchase of Dricon FRTW through the grant of the warranty included in this Agreement.

NOW, THEREFORE, intending to be bound hereby, the parties agree as follows:

**1. Warranty.** Arch Wood Protection warrants to Builder that if the roof into which Dricon FRTW is incorporated is built in accordance with the standards and design criteria described in Section 3, the Dricon Lumber and Plywood will not structurally fail due to a reduction in strength of the Dricon FRTW below Arch Wood Protection’s published strength properties due to humidity or heat encountered in the roof system for a period of forty (40) years from the date of installation of the Dricon FRTW by Builder or its subcontractors (the “Warranty Period”), subject to the following limitations and conditions.

**2. LIMITATION ON EXPRESS AND IMPLIED WARRANTIES.** THIS WRITTEN WARRANTY IS ARCH WOOD PROTECTION’S SOLE WARRANTY OF THE DRICON FRTW AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. BUILDER’S RIGHTS ARE LIMITED TO THOSE SET FORTH IN THIS WARRANTY. ARCH WOOD PROTECTION DISCLAIMS ALL OTHER EXPRESSED OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**3. Conditions.** Arch Wood Protection shall have no liability to Builder if any of the following conditions are not met:

(a) The building roof and the roofs of all other buildings built by Builder and its subcontractors in the same project must contain only Dricon FRTW where interior fire retardant treated wood FRTW is used or, if the Dricon FRTW is used in the repair of an existing roof, all such repairs must be done using only Dricon FRTW where interior fire retardant treated plywood is used in such repairs.

(b) This warranty applies only to Dricon FRTW properly processed in accordance with Arch Wood Protection specifications and labeled with an Underwriters Laboratories, Inc. stamp indicating that the product is Dricon FRTW. The Dricon FRTW must be handled, stored and installed in accordance with the Arch Wood Protection literature current at the time of purchase.

(c) The building design must meet all applicable building codes (including those relating to strength and ventilation of under roof spaces), comply with all appropriate design standards and be approved by the building code authority having jurisdiction. The roof structure must be based on designs commonly used in the industry.

(d) The building roof must be designed in accordance with the American Forest & Paper Association’s National Design Specification and the APA - The Engineered Wood Association’s Plywood Design Standard; the roof must be engineered utilizing the Dricon FRTW Application Guide DRI-774, and good design practices incorporating appropriate safety margins.

(e) The Dricon plywood used as roof sheathing must be a minimum 7/16" thick with more than three (3) plies.

(f) The damage to the Dricon FRTW or its strength reduction may not be attributable to Builder's or its subcontractors' negligence or wrongful act or omission, abnormal conditions, delamination, poor quality lumber and plywood, abuse or poor design, roof leaks or other causes other than heat and humidity.

**4. Exclusive Remedy.** If at any time within the Warranty Period the Dricon FRTW exhibits a loss of strength in excess of the published design values due to exposure to heat or humidity and that loss of strength has caused structural failure of all or a portion of the roof and if all other conditions of this Agreement are met, Builder's sole and exclusive remedy shall be as follows: Builder shall notify Arch Wood Protection of the structural failure as soon as reasonably possible. Builder shall at the direction of Arch Wood Protection and at Builder's expense, arrange for an independent testing agency to conduct tests of the Dricon FRTW in accordance with appropriate industry testing standards (including ASTM D 143 and D 1037). Builder shall notify Arch Wood Protection of the results of such testing within 30 days of receiving the test results. The test results and, if requested, samples of the affected Dricon FRTW, must be sent to Arch Wood Protection along with proof that the material was in fact Dricon FRTW and Builder shall permit Arch Wood Protection to inspect the Dricon FRTW and take additional samples if requested. If the Dricon FRTW proves defective, Arch Wood Protection shall at its sole option refund to Builder an amount equal to the original cost of the roof or repair the damage to the roof caused by the defective Dricon FRTW. Arch Wood Protection shall also reimburse the Builder for the expenses of having the Dricon FRTW tested. Builder shall not assert any claim or bring any action against any entity in the chain of commerce associated with the treatment or distribution of Dricon FRTW, as long as such claim or action is covered by the terms of this Agreement.

**5. Limitation on Damages.** Builder agrees that in no event will Arch Wood Protection be liable for any special, incidental or consequential damages of any kind, whether in contract, tort, strict liability or otherwise, including any damages arising from any use or inability to use the Dricon FRTW, whether through Arch Wood Protection negligence or otherwise.

**6. Failure of Exclusive Remedy.** In the event the exclusive remedy set forth in Section 4 fails of its essential purpose or is for any reason not enforced, Arch Wood Protection's liability under this Agreement shall be limited to the replacement of defective Dricon FRTW or return of the original purchase price of the defective Dricon FRTW.

**7. Statute of Limitations, Venue and Jury Trial.** Any action for breach of this Agreement must be commenced within one year after that cause of action has accrued in the city in which the principal office of the defendant to the action is located. Both parties waive their rights to jury trial with respect to any action between them.

**8. Indemnity.** Arch Wood Protection will indemnify Builder against any loss or damage caused by events constituting a breach of the warranty provided by this Agreement if (i) it is brought by a subsequent owner of a building which incorporates Dricon FRTW in the roof structure; and (ii) the claim meets all of the conditions and limitations set forth above for a claim under this Agreement brought by Builder. Arch Wood Protection's obligation to indemnify Builder is conditioned upon notification by Builder to Arch Wood Protection within 15 days after it learns of the claim, or, in the case of litigation, within 2 days of receipt of process thereof. Builder must conduct all testing required in Section 4 and cooperate fully with counsel chosen by Arch Wood Protection in the defense of any claim for which indemnity is sought at its own expense. Arch Wood Protection shall have no obligation to indemnify Builder for any loss or damages that fail to meet the conditions or exceed the limitations set forth in paragraphs 3,4 and 5 of this Agreement.

**9. Republication.** The warranty provided under this Agreement is provided only to Builder or his authorized agent and shall not create any rights in any third party. Builder shall not republish this

Agreement or the terms of the warranty to any third party without the prior written consent of Arch Wood Protection.

**10. Term and Termination.** This Agreement shall continue from year to year until terminated by either party upon 30 days notice, or until Builder fails to observe its obligations hereunder. In the event this Agreement is terminated, Arch Wood Protection will continue to honor claims under this Agreement with respect to Dricon FRTW installed prior to termination.

**11. Notice.** All notices or other communications required or permitted under this Agreement shall be in writing and personally delivered, or mailed by registered or certified mail, return receipt requested, postage prepaid, to the addresses designated in the preamble of this Agreement or to such other address or addresses as may hereafter be furnished by one party to the other party in compliance with the terms of this Section 11. All such notices and communications shall be deemed to be given for purposes of this Agreement on the day such writing is received by the intended recipient thereof.

**12. Entire Agreement.** This Agreement includes the complete and exclusive agreement between the Builder and Arch Wood Protection and supersedes any and all prior oral or written representations or agreements made by or between them, including, without limitation, any Fifteen or Forty Year Dricon Plywood Builder Warranty Agreement (a "Plywood Warranty Agreement"). Any Dricon Plywood previously purchased by Builder under a Plywood Warranty Agreement shall be covered by the warranty contained in this Agreement provided all of the conditions and limitations contained herein are met. Any warranty claim with respect to Dricon Plywood previously purchased under a Plywood Warranty Agreement which does not meet the conditions and limitations contained herein shall continue to be covered under the terms of the Plywood Warranty Agreement, subject to the terms and conditions contained therein. This Agreement may not be amended except by a written amendment signed by authorized officers of each party.

**13. Applicable Law.** This Agreement shall be governed by the laws of the State of Georgia, without regard to principles of conflicts of laws.

**IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the day and date first above written.**

**Builder:** \_\_\_\_\_

**Arch Wood Protection, Inc.**

By \_\_\_\_\_

By \_\_\_\_\_

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Street Address \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_