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# Guarantee Terms and Conditions

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## ***Approval of Application and Acceptance of Guarantee***

1. MPS will consider any Application and, in its discretion, may approve (Approval) or decline the Application, including a Late Application. Approval of Application does not constitute Acceptance of Guarantee.
  - 1.1. Upon Approval a notice of Approval of the Application and a notice of Practical Completion will be sent to the Client and Master Painter, for submission at Practical Completion.
2. **No Guarantee will be Approved or Accepted where the Application is received by MPS after the completion of the Works.**
3. Receipt or banking of the Application fee will not constitute Approval by MPS of the Guarantee.
4. MPS will consider any notice of Practical Completion received and, in its discretion, may accept (Acceptance) or reject (Rejection) the Approved Application
  - 4.1. The date the Guarantee comes into force (the date of Acceptance) will be the Practical Completion Date as defined in clauses 5 to 9.
  - 4.2. Upon Acceptance of the Guarantee a notice of Acceptance of the Guarantee will be sent to the Client and the Master Painter.
5. Where the Master Painter notifies MPS that the Homeowner has opted for the benefit of the MPS Guarantee, and where payment for the guarantee has been received by MPS, the Homeowner shall have the benefit of the Guarantee (pursuant to the Contract and Commercial Law Act 2017) subject to the Guarantee Terms and Conditions, as published on [www.masterpainters.co.nz](http://www.masterpainters.co.nz) and shall be entitled to enforce the Guarantee in accordance with those terms.

## ***Practical Completion***

6. Guarantees are issued by MPS on the condition that there will be a Practical Completion Date within 1 year of the date of Approval of the Application.
7. The Master Painter **OR** the Client will send MPS notice that Practical Completion has occurred and specifying the date that it occurred.
8. If the notice of Practical Completion has not been received by MPS within the lesser of either 1 year from the date of Approval or 3 months from the estimated end date in the Application, then the Approved Application will be rejected.
9. If MPS has received a notice of Practical Completion under clause 6, but does not accept that the Practical Completion date specified therein is correct, then MPS may (at its discretion) adopt an alternative deemed Practical Completion Date being the date MPS considers the Works achieved Practical Completion.
10. Such a deemed Practical Completion Date may (at MPS's discretion) be altered if a notice of Practical Completion is subsequently received by MPS from the Master Painter or from the Client.

## ***Cancellation of Application or Guarantee***

11. Approved Applications will be cancelled by MPS when;
  - 11.1. the Client or the Master Painter validly terminates the Contract; or
  - 11.2. the Client has provided any false or misleading information, in the Guarantee Application; or
  - 11.3. the Client has not made payment to the Master Painter in accordance with the Contract;
12. Accepted Guarantees will be cancelled by MPS when;
  - 12.1. the Client undertakes any remedial work including the repair of any Defect, or engages another painter or contractor to undertake any remedial work without the prior written consent of MPS; or
  - 12.2. the Client has not made payment to the Master Painter in accordance with the Contract; or
  - 12.3. the Client has provided any false or misleading information, in either the Guarantee Application Form or the Request for Transfer; or
  - 12.4. the Client has made a false or misleading claim or notification under the Guarantee.

## ***Limitation of Liability***

13. The **maximum aggregate cover** (the total of all claims under one guarantee) by MPS in respect to all claims under the Guarantee is limited to **\$50,000.00 (including GST), or the Contract Price, whichever is the lesser.**
14. It is common for the subject of the Contract to be for works being carried out at more than one dwelling or over multiple units. However, this Guarantee will apply to works being carried out **at one dwelling or unit only.**
15. The Guarantee applies to the contract as provided with this application. Further works at the same dwelling, under a separate contract will require a separate Guarantee.
16. Except as otherwise stated in these Terms and Conditions, the Guarantee shall terminate and be of no further effect at the date of the expiry of five years from the date of Acceptance (Termination Date).
  - 16.1. Remedial work will not extend this Termination Date.
  - 16.2. Any transfer of the Guarantee will not extend this Termination Date.

## ***What is covered by the Guarantee***

17. **Defect in Materials and Defect in Workmanship cover**, that applies from the date of Acceptance up to and including the fifth anniversary of that date.
  - 17.1. **Defect in Materials** means a substantial failure of any materials prematurely, having regard to recognised trade practice. Where there is a manufacturer or supplier warranty or guarantee on materials, the Client must make a claim on such warranty or guarantee first.
  - 17.2. **Defect in Workmanship** means a Defect from any failure by the Master Painter to comply with:
    - 17.2.1. the Contract; or
    - 17.2.2. regard to relevant trade practices and standards; or
    - 17.2.3. any relevant instruction or recommendation given by the manufacturer or supplier.
  - 17.3. **Please note Roof Coatings are Not covered by the guarantee, either for product or application.**

## ***The Guarantee Does NOT Cover***

18. The Guarantee does not cover and MPS shall not be liable for any:
  - 18.1. **matters or claims where the Client is either the Master Painter or is an Associate** of the Master Painter.
  - 18.2. **matters or claims covered by insurance** (including home and contents insurance and/or professional indemnity insurance).
  - 18.3. **Consequential Damage or Consequential Loss.**
  - 18.4. **any damage or Defect arising from a problem with the condition of the substrate** which was notified by the Master Painter in writing to the client and which the client elected not to alter.
  - 18.5. **damage or Defect that should have been avoided or resultant from normal wear and tear** (including damage or deterioration that could reasonably have been minimised or avoided by the Client by reasonable, regular and thorough inspections and maintenance by the Client).
  - 18.6. **damage or Defect beyond the reasonable control of the Master Painter** (including condensation, shrinkage, contraction or expansion of any material, and act of God.)
  - 18.7. **matters or claims that are not the Master Painter's responsibility** (including work or materials outside the Contract OR arranged by and/or paid for directly by the Client).
  - 18.8. **any damage or Defect of product that not an Approved Product.**
  - 18.9. **unavoidable aesthetic variance** (including aesthetic variance due to it being not reasonably practicable to match materials).
  - 18.10. **agreed deviations** (where any Client and Master Painter agree to deviate from the Contract, and/or agree to deviate with regard to relevant trade practices and standards for the Works).
  - 18.11. **colour consistency of coatings especially roof coatings** as these are subject to significant environmental impacts. The consistency of the overall coating is covered only.

18.12. **waterproofing or weathertight coatings and membranes** are not covered for other than their decorative aspects.

18.13. **Roof Coatings, either for product or application.**

### ***Client to Lodge a Claim***

19. MPS is not required to take any steps in relation to any notification or communication from the Client until the Client has, in the reasonable opinion of MPS, taken all reasonable steps to induce the Master Painter to make good the Defect.
20. Notwithstanding any agreement between the Master Painter and Client to rectify the Defect, unless the Master Painter has completed all the remedial work, **the Client must notify MPS no later than 30 days** after the date on which the Client became aware or should have become aware of this matter; and **lodge a claim with MPS on the prescribed MPS claim application form** signed by the Client, no later than 14 days after the date on which the Client first notified MPS.
21. Where MPS has been notified but the Client does not lodge a claim within 14 days of notification, MPS shall not be liable for any existing or future claims in regard to the matters notified.

### ***Claim Under Defect in Materials, Defect in Workmanship***

22. MPS shall assess and/or investigate the lodged claim and where the lodged claim appears valid shall instruct the Master Painter (if applicable) to make good the Defect within a timeframe or any extension as set by MPS.
23. Where the Master Painter is unwilling or unable to comply with the instruction, MPS may accept the claim.
24. MPS's assessment and/or investigation of a lodged claim is for MPS's benefit only and is solely for the purpose of determining whether the lodged claim appears to be valid. MPS shall not be liable, whether in contract, tort or otherwise, for any matter relating to or arising out of its investigation, save for its liability under the Guarantee.
25. A lodged claim shall be taken as having been accepted or declined when the acceptance or declination has been communicated in writing to the Client.
26. As a condition of MPS accepting a claim, the Client shall upon request assign to MPS all of their rights and remedies against any party or person connected with the Works, whether or not a party to the Contract. MPS may take any steps to enforce such rights and remedies. Further, **the Client shall give MPS all assistance that it might reasonably require.**
27. MPS may (at its discretion) decide whether to repair or replace a Defect. Where the cost to remedy any Defect is, in the opinion of MPS, out of all proportion to the loss or damage to the Client, then MPS may, in its discretion, pay the reasonable value of the repair or replacement to the Client in lieu of MPS remedying the Defect or assisting the Client to select a replacement Master Painter.
28. The method and manner of any remedial work undertaken under this Guarantee shall be at the discretion of MPS.

### ***Provision of All Relevant Information and Access***

29. The Client must allow MPS, its inspectors and the Master Painter or any replacement Master Painter access to inspect the Works and to undertake any agreed remedial work at any reasonable times.
30. The Client and the Master Painter each are obliged to assist MPS by providing access to and/or copies of all relevant documentation that may be required by MPS to enable MPS to assess and/or meet its obligations under the Guarantee.
31. If any failure by the Client to comply with these Terms and Conditions prejudices the ability of MPS to deal efficiently or economically with a claim or the underlying Defect, then MPS may (at its discretion), decline the claim in whole or in part, even where the claim has previously been accepted.

### ***Transfer of the Guarantee***

32. The Guarantee is transferable upon the sale of the Residential Property where:
  - 32.1. the Guarantee has not been Cancelled or reached Termination Date; and
  - 32.2. the Client of the Guarantee is the seller of the Residential Property; and
  - 32.3. a Request for Transfer Form (available at [mpservices.co.nz](http://mpservices.co.nz)) has been received by MPS within 90 days after settlement of the sale of the Residential Property.
33. The Transferee shall be deemed to have made a full inspection of the Residential Property prior to purchase and acknowledges that MPS will not be liable for any Defects that in its opinion were reasonably discoverable.
34. A Request for Transfer Form must be accompanied by (at MPS's discretion):
  - 34.1. a copy of the relevant Sale and Purchase Agreement; and

34.2. an administration fee as set at [mpservices.co.nz](http://mpservices.co.nz).

35. Receipt or banking of the administration fee will not constitute approval by MPS of the Request for Transfer.
36. A Request for Transfer Form is subject to approval by MPS which may (at its discretion) approve or decline a transfer.
37. Where MPS declines a transfer, the administration fee will be refunded.

### **No Agency**

38. The Master Painter is not an agent of MPS in relation to this Guarantee (including in relation to any investigation and/or any remedial work). Except as is expressly provided in this document, MPS shall not be bound by or liable for (whether in contract, tort or otherwise) any statement or act or omission by the Master Painter. No statement or claim or notice made by the Client to the Master Painter is to be construed as having been made to MPS.
39. From time to time MPS may appoint an inspector in relation to this Guarantee (including providing some particular assistance in relation to any investigation and/or any dispute and/or any remedial work). MPS shall not be bound by or liable (whether in contract, tort or otherwise) for any statement or recommendation or act or omission made by any such inspector in such context. No statement or claim or notice made by the Client to any such inspector is to be construed as having been made to MPS.

### **Disputes**

40. Where there is a dispute between the Client and the Master Painter (or replacement Master Painter where applicable) in respect of their rights and obligations under the Contract, MPS is entitled to require that dispute be resolved prior to a claim being accepted or declined by MPS.
41. If the Client disputes a decision by MPS to decline a claim (in whole, or in part), then the Client must send notice of the dispute to MPS within 21 days of having been advised of MPS's decision.
42. If the Client duly notifies MPS of such a dispute, then the Client and MPS will, in good faith, communicate in an attempt to resolve the dispute.
43. If the dispute (as referred to above) is not resolved between the parties within 21 days of the Client's notice to MPS of the dispute, then either party may notify the other that they request that the dispute be referred to mediation. The other party will consider such request in good faith and will not arbitrarily refuse such a request.
44. If the dispute (as referred to above) is not resolved between the parties within 42 days of the Client's notice to MPS of the dispute (or, within 21 days of the conclusion of the mediation process, if the parties participate in a mediation), then either party may notify the other that they request that the dispute be referred to arbitration (under the Arbitration Act 1996). The other party will consider such request in good faith and will not arbitrarily refuse such a request.
45. If the parties cannot agree on the mediator or the arbitrator, then the mediator or arbitrator shall be appointed by the current President of the Arbitrators and Mediators Institute of New Zealand.
46. MPS shall have the right, in advance of any dispute resolution process, to re-inspect any Works which is the subject of the dispute.

### **Notices**

47. Any notice by MPS to the Client or to the Master Painter shall be deemed to be sufficiently given if it is handed to the Client or the Master Painter or delivered to their postal addresses provided to MPS in the Guarantee Application Form or is sent to the email address provided to MPS in the Guarantee Application Form. Where no postal address is provided, the notice may be delivered to the last known place of residence or business or office. Any notice by the Client or the Master Painter to MPS shall be deemed to be sufficiently given if delivered to MPS, 7C Gibbons Street, Upper Hutt.

### **No Waiver**

48. No failure or delay on the part of MPS in enforcing any of its rights or remedies under the Guarantee shall constitute a waiver of that right or remedy.

### **Guarantee Booklet**

49. All the documents in this booklet form part of the Guarantee. In the event of any conflict between these documents, then the Terms and Conditions shall prevail.