

# 20 Year No Dollar Limit Weather Tight Warranty

HPM Building Supply, 16-166 Melekehwiwa Street, Keaau, HI 96749



Project: \_\_\_\_\_

## PART 1. LIMITED WARRANTY

HPM Building Supply ("HPM") and the Roofing Contractor whose signature appears below ("Roofing Contractor") hereby issue the following Limited 20-Year Weather Tight Warranty exclusively to the original owner ("Owner") of the building located at \_\_\_\_\_ (the "Building") with respect to the HPM-furnished metal roof panels, flashing, and items used to fasten panels and flashing to the roof structure of the Building, including roof jacks, curb attachments, and components (the "Roofing System"). This Limited Warranty is not valid until all monies owed to HPM and the Roofing Contractor for any and all materials used in the Roofing System are paid in full.

For a period of 20 years and as specified below, the Roofing Contractor and HPM warrant that:

- (a) the Roofing system was installed in accordance with HPM's installation instructions and/or approval drawings approved in advance by HPM; and
- (b) the Roofing system will be adequate to prevent leaks for 20 years commencing from \_\_\_\_\_, the date of completion of the installation of the Roofing System (the "Completion Date").

## PART 2. REMEDY

The sole and exclusive remedy under this Limited Warranty shall be one of the following to be chosen at HPM's sole discretion: repair or one replacement of the Roofing System. HPM and/or Roofing Contractor shall provide and perform any repair or replacement of the Roofing System as set forth in this Limited Warranty without a set or predetermined cost limit for materials and labor; this Limited Warranty therefore is a **No-Dollar Limit** warranty. Any repair or replacement is limited to the Roofing System only; neither HPM nor Roofing Contractor shall pay, or otherwise be responsible for, any costs associated with or related to anything else affixed to the Roofing System or the Building's roof, including, but not limited to, antennas, snowguards, and/or solar panels, without HPM's written consent prior to sale. Any repair or replacement provided under this Limited Warranty will not restart the warranty period, but any repairs shall carry a warranty against leaks only for any then-remaining balance of the original 20-year warranty period.

Roofing Contractor shall have responsibility to correct all erection or installation difficulties until the Roofing System performs in a manner that does not allow intrusion of water from the exterior of the Roofing System into the building envelope for a period of 2 years from the Completion Date, and for successive 2-year periods from the date of any leaks reported or repaired within any such 2-year period. During this period, Roofing Contractor shall be responsible for water infiltration and roof or component leaks caused by defects in the installation of the Roofing System and shall correct any installation defects and provide a watertight roof for the Building.

For a period of 2 years from the Completion Date and for successive 2-year periods from the date of any leaks reported or repaired within any such 2-year period, HPM's responsibility is limited to water infiltration caused by the improper forming of panel or defective panels. HPM shall have responsibility for any matter arising after the 2nd anniversary of the Completion Date and after 2 continuous years of a watertight condition of the Roofing System but arising not later than the 20th anniversary of the Completion Date.

**THIS LIMITED WARRANTY SUPERSEDES AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND HPM AND ROOFING CONTRACTOR HEREBY DISCLAIM ALL SUCH WARRANTIES. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

**THIS LIMITED WARRANTY ALSO SUPERSEDES AND IS IN LIEU OF ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN CONTRACT OR TORT, WHETHER OR NOT ARISING FROM HPM AND/OR ROOFING CONTRACTOR'S NEGLIGENCE, ACTUAL OR IMPUTED, OR STRICT LIABILITY. THIS LIMITED WARRANTY SHALL BE OWNER'S SOLE AND EXCLUSIVE REMEDY AGAINST HPM AND/OR ROOFING CONTRACTOR ARISING OUT OF OR RELATED TO THE MATERIAL OR THE ORDER OR DELIVERY OF THE MATERIAL.**

**UNDER NO CIRCUMSTANCES SHALL HPM AND/OR ROOFING CONTRACTOR BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OR LOSSES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, BUSINESS INTERRUPTION LOSSES, OR LOST USE OF THE BUILDING OR ITS CONTENTS, EVEN IF HPM AND/OR ROOFING CONTRACTOR HAVE RECEIVED NOTICE OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. OWNER SPECIFICALLY WAIVES THE RIGHT TO ATTORNEY'S FEES, INCLUDING ANY CLAIM FOR ATTORNEY'S FEES PURSUANT TO HAWAII CIVIL PRACTICE AND REMEDIES CODE, ANY OTHER STATUTE, OR THE COMMON LAW.**

## PART 3. WARRANTY CONDITIONS, LIMITATIONS AND EXCLUSIONS

This Limited Warranty is subject to the following limitations:

1. This Limited Warranty shall apply only to roofing systems provided by HPM and installed in areas where normal atmospheric conditions prevail.
2. HPM shall have no liability or responsibility under or in connection with this Limited Warranty if the Roofing Contractor failed to use all approved roof curbs, roof jacks, sealants, mastics, sub framing, roof panels, clips, fasteners, underlayment(s), metal flashings, and coping, and other metal roofing components provided by HPM or a HPM-approved vendor, nor shall HPM have any liability or responsibility in connection with this Limited Warranty if the Roofing Contractor failed to install the Roofing System in accordance and compliance with HPM's Design /Installation Information manual, details, drawings, and installation instructions for the layout, design, and installation of the Roofing System, or if the Roofing System is so constructed that the roof will not allow normal drainage of water. This Limited Warranty does not cover any damage caused by ponding, standing, or cascading water from upper to lower roof areas on the roof panels or components. This Limited Warranty does not cover roofs that are designed or settle to a degree of slope of less than 1/2" drop in 12" horizontal measurement.
3. Any cause of failure beyond the control of HPM and the Roofing Contractor.
4. This Limited Warranty shall be valid only if the Roofing System is erected and installed strictly in accordance with (1) HPM's engineering plans, drawings, specifications, and details or applicable engineering plans, drawings, specifications, and details approved by HPM Metal Roofing Technical Dept. prior to erection; and (2) current erection and installation manuals, details, and drawings issued by HPM. Any modification of or deviation from HPM's specified materials, products, or specified erection procedures without the prior written consent of the HPM Metal Roofing Technical Dept will void and invalidate this Limited Warranty.
5. This Limited Warranty shall be valid only if the installation of the Roofing System is inspected and approved by an approved third-party independent roof consultant ("Roof Consultant") or by an approved and designated representative of HPM. The Roof Consultant must be approved by HPM and must be registered and certified by the Roof Consultants

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HPM Building Supply, 16-166 Melekehwiwa Street, Keaau, HI 96749



Institute (RCI) as an RRO or RRC and must demonstrate professional experience and competency and be recognized in the industry as a metal roofing expert. Any deficiencies noted upon inspection must be corrected to the reasonable satisfaction of HPM prior to the issuance and effectiveness of this Limited Warranty. The HPM Metal Roofing Technical Dept. or the Authorized Roof Consultant has the authority to immediately stop installation of the HPM Roofing System if it is not being installed in accordance with the drawings, specifications, and HPM approved installation details and instructions.

This Limited Warranty specifically **EXCLUDES** water infiltration caused in whole or in part by any of the following conditions, circumstances, or situations:

1. A marine (salt water) atmosphere or a regular or continuing spray of salt or fresh water.
2. Heavy fallout or exposure to corrosive chemicals, including, but not limited to, ash or fumes from a chemical plant, foundry, plating works, kiln, fertilizer manufacturing plant, or paper plant.
3. Any corrosive substance condensation of any harmful substance contained, generated, or released from the underside of the roof plenum or attic caused by any reason, not just improper ventilation.
4. Hail, fire, lightning, wind damage that arises outside engineered parameters, hurricane, tornadoes, earthquakes, volcano's, acts of violence, and any or all other acts of God.
5. Any alterations, such as, but not limited to fixtures, structures or other utilities placed upon or attached to the Roofing System without prior written permission from HPM.
6. Any repairs performed, or materials furnished by someone other than HPM and the Roofing Contractor.
7. Failure by the Owner to take reasonable care in maintaining the Roofing System, including but not limited to, failure to clean debris from the valleys and gutters to allow normal water run-off.
8. Faulty structure or roof design or construction thereof.
9. Birds, vermin, rodents, insects, or any other animals and pests that can cause any structural or architectural problems with the Roofing System.
10. Settlement, failure, or cracking of the roof deck, roof, walls, or the foundation of the Building that may cause any change in the roof panels, flashing, or other parts of the Roofing System.

#### **PART 4: WARRANTY COSTS AND FEES**

The cost and fee for the Limited **20-Year Weather Tight Warranty** shall be \$ \_\_\_\_\_. The Limited **20-Year Weather Tight Warranty** fee shall be paid by the project owner, customer, or contractor, and shall be invoiced by HPM as a specific and identified **Warranty Invoice** upon completion of the installation of the Roofing System and upon execution of the Limited Warranty. The Limited **20-Year Weather Tight Warranty** shall not be valid until the **Warranty Invoice** has been paid in full as provided under HPM's payment terms and conditions and until all warranty documents and requirements are satisfied and completed.

#### **PART 5: NOTIFICATION OF CLAIMS AND GENERAL PROVISIONS**

All claims hereunder must be submitted in writing to HPM and the Roofing Contractor within the warranty period and within 30 days of discovery of any water infiltration of the Roofing System. Owner's failure to make a written, timely claim shall relieve HPM and all other parties of any and all responsibility and/or liability under this Limited Warranty. If, after inspection by HPM or its agents, it is determined that the water infiltration of the Roofing System is caused by defects in HPM's material or by the Roofing Contractor's workmanship in accordance with this Limited Warranty, the Roofing System shall be repaired or replaced in accordance herewith. All such work shall be completed within a reasonable period of time after notice to HPM. Owner's remedy is limited to the repair or replacement of the Roofing System; neither HPM nor Roofing Contractor will pay, or otherwise be responsible for, any costs associated with anything else affixed to the Roofing System, including, but not limited to, solar panels or antennas, without their written consent prior to sale.

#### **PART 6: DISPUTE RESOLUTION; MANDATORY MEDIATION; BINDING ARBITRATION**

##### 6.1 Definition of Dispute.

"Dispute" means any dispute, controversy, or claim arising out of or relating to this Limited Warranty, the Roofing System, the performance or alleged failure thereof, or the interpretation, enforceability, or breach of this Limited Warranty.

##### 6.2 Mandatory Good-Faith Resolution and Inspection.

As a condition precedent to mediation or arbitration, the parties shall first attempt in good faith to resolve any Dispute through informal discussions. If the Dispute involves water infiltration or alleged failure of the Roofing System, HPM shall have the right to inspect the Roofing System in accordance with this Limited Warranty and may require review by an independent roofing consultant with metal roofing expertise. Any findings shall be non-binding unless otherwise agreed.

##### 6.3 Mandatory Mediation; Exclusive Provider.

If the Dispute is not resolved within thirty (30) days after written notice, the Dispute shall be submitted to mandatory, non-binding mediation administered exclusively by Dispute Prevention & Resolution, Inc. ("DPR"), conducted in Honolulu, Hawaii, before a mediator experienced in construction and warranty disputes.

##### 6.4 Mediation Duration Cap.

Mediation shall be limited to a maximum of sixty (60) days from the mediator's appointment unless extended by written agreement of all parties. Each party shall bear its own fees and share mediator and administrative costs equally.

##### 6.5 Binding Arbitration.

If the Dispute is not resolved through mediation, the Dispute shall be finally resolved by binding arbitration, administered by DPR or, if DPR arbitration services are unavailable, by the American Arbitration Association under its Construction Industry Arbitration Rules, as modified herein.

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HPM Building Supply, 16-166 Melekehwiwa Street, Keaau, HI 96749



## 6.6 Seat, Venue, and Governing Law.

The arbitration shall be seated in Honolulu, Hawaii, governed by the laws of the State of Hawaii, without regard to conflict-of-laws principles.

## 6.7 Arbitrator Qualifications.

The arbitration shall be heard by one neutral arbitrator with substantial experience in construction or warranty disputes.

## 6.8 Scope and Limitations of Authority.

The arbitrator shall have no authority to award punitive, exemplary, incidental, indirect, or consequential damages, or to expand remedies beyond those expressly set forth in this Limited Warranty.

## 6.9 Shortened Statute of Limitations.

Any arbitration demand must be filed within one (1) year from the date the claimant knew or reasonably should have known of the facts giving rise to the Dispute, and in all events prior to expiration of the applicable warranty period.

## 6.10 Confidentiality.

All mediation and arbitration proceedings shall be confidential except as required for enforcement or by law.

## 6.11 Enforcement of Dispute Resolution Obligations; Limited Fee Carve-Out.

Notwithstanding any attorneys'-fee waiver elsewhere in this Limited Warranty, the prevailing party in any action brought solely to compel mediation or arbitration or enforce this Part 6 shall be entitled to recover its reasonable attorneys' fees and costs incurred solely for such enforcement.

## 6.12 No Class or Representative Actions.

All Disputes shall be resolved only on an individual basis and not on a class, collective, or representative basis.

## 6.13 Finality of Award.

The arbitrator's award shall be final and binding and may be enforced in any court of competent jurisdiction.

## 6.14 Preservation of Warranty Limitations.

Nothing in this Part 6 expands or modifies any limitation of remedies, damages, or liability set forth elsewhere in this Limited Warranty.

If upon HPM's inspection, HPM determines that the leaks in the Roofing System are not the result of the Roofing Contractor's workmanship or by any occurrence specifically not covered by this Limited Warranty, the party requesting HPM's inspection shall be liable for all direct expenses incurred by HPM to conduct the roof inspection.

All notices given under or pursuant to this Limited Warranty shall be in writing and sent by certified mail, return receipt requested, to HPM and the Roofing Contractor at the following addresses:

Attn: Warranty Department

Roofing Contractor:

HPM Building Supply

16-166 Melekehwiwa St.

Keaau, HI 96749

During the warranty period, HPM and its agents shall have free access to the roof during regular business hours. HPM will give reasonable notice for access to the building owner or his agents.

This document constitutes the entire Limited Warranty made by HPM and Roofing Contractor. Any modification or amendment of this Limited Warranty must be made in writing with the written consent of HPM or its authorized representative and must be signed by all parties.

The terms and conditions of this Limited Warranty may be waived only in writing by HPM or its authorized representative. No oral statements, course of conduct, or course of manner shall be deemed to constitute a waiver.

The invalidation of any provision of this Limited Warranty will not affect the validity or enforceability of its remaining provisions.

This Limited Warranty is for the sole use of the Building's Owner and is not transferable or assignable.

This Limited Warranty constitutes HPM's and Roofing Contractor's entire warranty for the Roofing System and supersedes any prior agreements, understandings, conditions, representations, and warranties, whether oral or written, with respect to the Roofing System's warranty. Owner acknowledges that no promise, agreement, or representation has been made in connection with this Limited Warranty, nor has any promise, agreement, or representation been relied upon by Owner concerning Roofing System defects or installation errors or the repair or replacement of any part of the Roofing System, except for those that are expressly set forth in this Limited Warranty.

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Executed on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

METAL ROOFING SYSTEMS INSTALLED (HPM PROFILE): \_\_\_\_\_

HPM PROJECT NO.: \_\_\_\_\_ TOTAL SQUARE FOOTAGE OF ROOF: (PER HPM INVOICES) \_\_\_\_\_

HPM BUILDING SUPPLY      SIGNATURE: \_\_\_\_\_      TITLE: Technical Services Rep.

ROOFING CONTRACTOR: \_\_\_\_\_      SIGNATURE: \_\_\_\_\_      TITLE: \_\_\_\_\_

OWNER: \_\_\_\_\_      SIGNATURE: \_\_\_\_\_      TITLE: \_\_\_\_\_

**This Limited Warranty is not valid unless signed and issued by an authorized HPM agent and signed by all parties identified and listed above as being designated parties to the Limited Warranty.**

SAMPLE