Durability Warranty

DuluxAustralia Pty. Ltd., A.C.N. 004 117 828, A.B.N. 99 004 117 828, trading as Dulux Powder Coatings, 1-15 Pound Road West, Dandenong South, Victoria, 3175 Australia ("Dulux") being the manufacturer or distributor of the Duralloy® products listed in Schedule A ("the Product"), warrants to the Applicator listed in Schedule A ("the Applicator"), subject to the provisions set out below, that the Products will perform in the manner and for the times set out below when properly applied to chemically cleaned and pretreated aluminium of a type suitable for exterior use ("Metal")

PERFORMANCE WARRANTY PROVISIONS

1. Subject to the provisions of any law (statute or otherwise) rendering any exclusion or limitation of liability in this Performance Warranty unlawful and of no effect and to any conditions, warranties, guarantees or rights which are mandatorily implied into the sale of goods or provision of services, the only condition, warranty, guarantee or right given by Dulux in relation to the Product is as set out in this Performance Warranty. The Applicator agrees that this Performance Warranty replaces condition 2 of Dulux's Standard Conditions of Sale (attached in Schedule B). Otherwise, the Standard Conditions of Sale are to be read together with this Performance Warranty. This Performance Warranty shall prevail in the case of any inconsistency between the provisions of this Performance Warranty and the provisions of Dulux's Standard Conditions of Sale. This Performance Warranty shall be null and void to the extent that there is non-compliance with any of its terms.

2. Dulux warrants that the product when applied to the metal and baked in accordance with this Performance Warranty and the Applicator's Manual, will not, under normal atmospheric conditions:

   2.1 Peel, crack or flake for a period of 10 years from the date the Product is applied to the Metal.

   2.2 Chalk in excess of a numerical rating of 6 within 10 years from the date the Product is applied to the Metal when measured in accordance with the procedures specified in AS1580 method 481.1.

   2.3 Fade or change in colour so as to give delta E (Hunter) laboratory reading greater than 5 units from the original colour within 10 years from the date the Product is applied to the Metal. Colour measurements shall be made on clean surfaces free of oil, grease, dirt, chalk oxidised film or other contaminants and using the procedure described in ASTM D-2244-85.

   It is understood that chalk, fade or colour changes may not be uniform if the surfaces are not equally exposed to the sun and the elements.

3. The warranties in clause 2 are subject to the following further provisions:

   3.1 The Product must be applied to pretreated new Metal under manufacturing conditions, coating weights of chromate conversion coating to Dulux approved specification and applied as described in the Duralloy® Applicator's Manual.

   3.2 The pretreatment must meet ASTM D1730 Type B, method 5 of method 7. Processing must conform with AS3715 for coating weights of 200 - 500mg/m^2. Colour of coating light yellow or light green is a guide to effectiveness of pretreatment deposition. Non Chrome conversion coatings, if used by a Registered Applicator, must be applied and maintained in accordance with the manufacturer's instructions.

   3.3 The warranties will apply only to the Building components and the Product batches which Dulux has specifically and in writing designated to the Applicator as being covered by this Performance Warranty.

   3.4 The warranties will only apply to building products which are at least 100 metres from salt water and no more than 3 floors from the ground.

   3.5 This warranty shall apply only to Metal which is coated with the Products by an Applicator registered with Dulux.

   3.6 A systematic maintenance programme meeting AAMA 610.1 1979 must be instituted to periodically at least once every 3 months clean the surface of accumulation of concentrated deposits and pollutants.

   3.7 The warranties will apply only to the Product which the Applicator applies within 12 months from the date Dulux delivers the Product to the Applicator.

   3.8 The Applicator must complete all tests as detailed in the Duralloy® Applicator's Manual and retain test reports and 3 pieces of production coated Metal extrusions or sheets or sections or parts coated with the Product per shift. Each sample coated with the Product must be fully representative of the beginning, middle and end of the production for the nominated building and must be identified by a Dulux batch number and a date of coating. It is incumbent on the Applicator to forward only coated Metal that meets the test methods described in AS3715/BS6496/ Duralloy® Applicator's Manual.

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3.9 The Applicator will maintain throughout the relevant warranty period, adequate records to provide identification of the batch number of all Products in the field and where each batch of product was applied to Metal in the building. The Applicator agrees that Dulux shall be permitted to inspect such records. In the event of a claim under this Performance Warranty, the Applicator shall provide Dulux with evidence that the Products were manufactured by Dulux and applied by the Applicator to this Metal.

4. Subject only to any overriding law (statutory or otherwise) to the contrary, Dulux shall not be liable for any representation or statement made by or on behalf of Dulux whether made prior to or after the giving of this Performance Warranty. Dulux's liability will be solely derived from the terms of this Performance Warranty.

5. In the event of a claim under this Performance Warranty:

5.1 Claims must be made to Dulux in writing by the Applicator within 30 days after the Applicator is informed of the defective coating.

5.2 Dulux must be given reasonable opportunity to inspect the coated Metal claimed to be defective.

5.3 The Applicator must send to Dulux a copy of all production and quality records describing the application of the Product, demonstrating that the production conditions and quality control checks as described in the Duralloy® Applicator's Manual were followed and the dates on which the product was applied.

5.4 The warranties shall not apply if the failure is caused by a failure resulting from abnormal external influences including but not limited to bi-metallic corrosion; mechanical abrasion; falling objects; damage during transportation, installation and storage; explosion; fire; riots; acts of war; terrorism; radiation; harmful chemicals or fumes; temperatures in excess of 110ºC; water chemicals and foreign substances and excessive salt atmospheres or deposits or failure from post formed or post fabrication processes or any other circumstances beyond Dulux's reasonable control.

5.5 For a valid claim to be made under this Performance Warranty, the Applicator shall establish to Dulux's satisfaction that 5% or more of the total coated area to which the Product has been applied failed to meet the performance criteria referred to in clause 4, as a result of an error or defect in the formulation or manufacture of the Product.

6 If it is determined that the failure is covered by the warranties:

a) Dulux's liability shall be limited to the actual cost of repairing, ie. replacing or recoating, the defectively coated Metal or replacing the Product at Dulux's election, which shall constitute Dulux's sole liability and the Applicator's sole remedy (whether at law or in equity or otherwise and including for negligence). In no event shall Dulux be liable for any further direct, incidental, special, or consequential damages.

b) The cost of repair or replacement shall be determined by Dulux using contractors, materials and practices selected by Dulux. Dulux will determine, at its reasonable discretion, the most appropriate materials and practices for remedying the failure.

c) Where Dulux elects to repair the defectively coated Metal, the Applicator will upon request by Dulux obtain and submit to Dulux two or more competitive bids for remedying the failures in the manner required by Dulux. Dulux reserves the right to reject such bids and may obtain additional bids itself.

d) Upon acceptance by Dulux of any such bids, Dulux may authorise the Applicator in writing to proceed with the required corrective work and the manner in which it is to be performed. Upon receipt of satisfactory proof of its expenses and a full and complete written release from the Applicator of any and all further claims against Dulux under this Performance Warranty arising from such failure, Dulux will pay the Applicator's authorised costs of labour and materials, in accordance with sub-clause b).

e) This Performance Warranty shall extend to any repaired coated Metal for the remainder of the Warranty period applicable to the Metal originally coated.

7. The Applicator agrees that:

7.1 The Applicator has no authority to make any representations or statements in relation to the Products on Dulux's behalf.

7.2 The Applicator will not give any warranty, condition or guarantee or make representation to the owner of the Building ("Building Owner") other than to give the same warranties as are set out in this Performance Warranty

7.3 The Applicator shall indemnify Dulux against all claims, costs, damages and losses, whether direct or consequential, as a result of a breach by the Applicator of clauses 7.1 and/or 7.2 .

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8 All notices given under or pursuant to this agreement shall be in writing and sent by registered mail, postage paid, return receipt requested to:

Marketing Manager
Dulux Powder Coatings
1-15 Pound Road West, Dandenong South, Victoria, 3175
Australia

9 The law of Australia is the governing law of this Performance Warranty and the Conditions of Sale in Schedule B.

Schedule A

Name of Applicator		**Registration Number**	
Project Name			
Project Order Number (if Applicable)			
Project Location ("the Building")			
Architect/ Specifier			
Builder			
Fabricator			
Powder Name			
Powder Code			
Batch number	n/a	**Qty of Powder Used**	Kg
Components Coated			
Square Metres of Metal Coated			
Date Coating Completed			

	Applicator		**Dulux**	
	Signature	…..…….	Signature	…..…….
Please print	Name	……..……	Name	Michael Pearce
	Position	……..…	Position	Marketing Manager

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Schedule B - Conditions of Sale

Unless otherwise agreed to in writing by Dulux, the following provisions apply to the sale of the Products to the Applicator:

1. Customer's Statutory Rights

The exclusions and limitations contained in this Schedule B are subject to any overriding law to the contrary, the application of which may not be excluded or limited.

2. **Advice**

Subject to clause 1 of this Schedule B and to the provisions of the Performance Warranty, any advice, recommendation, information, assistance or service provided by Dulux in relation to the Products or its use or application is given in good faith and is believed by Dulux to be appropriate and reliable. However, advice, recommendations, information, assistance or service provided by Dulux in relation to the Products is provided without liability or responsibility on the part of Dulux.

3. **Property**

a The risk in the Products purchased shall pass to the Applicator upon delivery to the Applicator or his agent or to a carrier commissioned by the Applicator.

b Property in each unit of the Products purchased shall pass to the Applicator when full payment has been received (each unit being considered as a whole) by Dulux, resale by the Applicator, consumption of the Products (otherwise than by repacking) by the Applicator or the mixing of the Products with other goods, whichever occurs first.

c Dulux may (without prejudice to any of its other rights) without previous notice retake and resume possession of all goods which remain the property of Dulux and by its servants and agents may enter upon the Applicator's premises or any other place where goods may be for that purpose upon the occurrence of one of the following events:

i. Where the Applicator is a corporation, the Applicator commences to be wound up or is placed under statutory or like management or a receiver or administrator is appointed or an encumbrancer takes possession of its undertakings or property or any part thereof; or

ii. Where the Applicator is a natural person, the Applicator becomes insolvent or bankrupt or commits an act of bankruptcy or make an assignment for the benefit of a creditor; or

iii. The Applicator fails to pay the whole or any part of the purchase prior or transport or other charges for any unit of the Product supplied when due and payable.

4. **Force Majeure**

Deliveries may be totally or partially suspended by Dulux during any period in which Dulux may be prevented or hindered from delivering by Dulux's normal means of supply or delivery by normal route through any circumstances outside its reasonable control, including but not limited to strikes, lockouts, raw material shortages, accident or breakdowns of plant or machinery. Should Dulux due to short supply of any material, ingredient or finished stock be unable to supply, it may as its sole and unfettered discretion make available a proportion of available supply to the Applicator and will not be regarded as a breach of contract for so doing.

5. **Future Dealing**

The provisions of this Schedule B, the Performance Warranty and Dulux's General Conditions of Sale shall prevail over any items set out in the Applicator's documentation and shall apply, until further notice is given to the contrary by Dulux, to all supplies of the Products to the Applicator.

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