



Dated 24<sup>th</sup> November 2009

**AKZO NOBEL DECORATIVE COATINGS LIMITED**

**SWIFT JOINERY MANUFACTURERS LIMITED**

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**GUARANTEE AGREEMENT**

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**ADDLESHAW GODDARD**



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This Akzo Nobel Guarantee Agreement dated 24<sup>TH</sup> November 2009 is made

**Between**

- (1) **Akzo Nobel Industrial Coatings Limited** whose registered office is; Unit 4A, Mercer Way, Shadsworth Business Park, Blackburn, Lancashire, BB1 2QZ company registration number 2648158.
- (2) **Swift Joinery Manufacturers Limited “the Company”** whose registered office is at Unit 6, Carr Wood Lane, Castleford, WF10 4SB

**1 Definitions**

1.1 In this Guarantee, the following expressions shall have the following meanings:

**Allowable Costs** means [*the reasonable minimum cost of recoating the Materials or other remedy if cheaper*]

**Applicable Guarantee Period** means the period of up to 10 years for Opaque and 7 years for Translucent finishes from the Supply Date

**Claim** means a valid claim of a Defect in the Coating System made by Swift Joinery under and in strict accordance with the terms of this Guarantee

**Coating System** means together the primer midcoat and topcoat coating products manufactured and supplied by Akzo Nobel and listed in schedule 1 to this Guarantee

**Customer** means the customer to whom the Products are supplied by the Company

**Defect** means, subject to the terms of this Guarantee, embrittlement, flaking or cracking of the Coating System arising during the Applicable Guarantee Period

**Material** means, subject to the terms of this Guarantee, the substrate material to which the Coating System has been or is to be applied

**Product(s)** means the end product after the Coating System has been applied to the Material

**Relevant Amount** means the greater of:

- (a) The Allowable Costs; and
- (b) The amount actually paid by the Company to Akzo Nobel; (e.g. the amount paid for the coating at the time of manufacture)

in each case in respect of a Claim. Allowable costs would, therefore, be described as both the cost of a replacement Coating System and any reasonable associated costs that are incurred to remove the existing coating and apply a new one.

**Specification** means the specification for the application of each element of the Coating System as set out in schedule 2 to this Guarantee

**Supply Date** means the date on which the Product which is the subject of the Claim concerned was supplied to the Customer.

**This Guarantee** means this agreement, subject to the terms set out below

**Guarantee Start Date** means 24<sup>th</sup> November 2009

- 1.2 The word "including" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

## **2 Guarantee**

- 2.1 Subject to the terms of this **Guarantee**, Akzo Nobel undertakes to pay to the Company the Relevant Amount in respect of each Claim.
- 2.2 This **Guarantee** shall apply for the Applicable **Guarantee** Period after which it shall automatically terminate.

## **3 Duration**

- 3.1 This Agreement shall come into force on the **Guarantee** Start Date and shall continue in full force and effect, subject to clause 5.2, below, unless and until terminated by either Akzo Nobel or the Company giving to the other not less than 3 months' written notice of termination
- 3.2 In addition Akzo Nobel shall be entitled to terminate this Agreement forthwith by written notice to the Company in the event that the Company:
- (a) commits any breach of this Agreement which is irremediable or which (if remediable) is not remedied within 30 days of written notice by Akzo Nobel to the Company; or
  - (b) the Company enters into administration, administrative receivership or liquidation or is the subject of any application or resolution for the appointment of an administrator, administrative receiver or liquidator.
- 3.3 If this Agreement is terminated by Akzo Nobel then any products supplied by the Company to any customers after the termination date will be covered by the Guarantee provided that product was treated with coating system that had been supplied by Akzo Nobel prior to termination.

## **4 Exclusion**

Clause shall not apply to, and Akzo Nobel shall have no obligation to make any payment to the Company in respect of the following:

- (a) any circumstance in which the Coating System has been applied to the Material other than by the Company;
- (b) circumstance in which the primer, midcoat and topcoat elements of the Coating System have not been utilised together on the Material to which the Relevant Claim concerned relates;
- (c) any defect to the extent it results from non-compliance with any provision of relevant Akzo Nobel instructions relating to the Coating System which shall include, without limitation, instructions relating to application of the Coating Systems, storage parameters for the Coating System or the condition of the Material.

## 5 Terms of Guarantee

### Obligations

This **Guarantee** shall only apply if the Company:

- (a) informs Akzo Nobel promptly on the discovery of any Defect (and if such Defect is apparent on reasonable inspection on delivery, within seven days from the date of delivery) and confirms this in writing to Akzo Nobel, together with its authorisation to Akzo Nobel to inspect the Material or element of the Coating System concerned, within seven days of receipt of such notification; and
- (b) Permit Akzo Nobel to enter the Company's or the Customer's premises at a time convenient to Swift Joinery to allow for inspection and repair.

### Limits of Guarantee

- (c) This **Guarantee** does not apply to any Defect to the extent that it results from:
  - (i) any risks actually or usually insured against, including, without limitation, lightning, vandalism, damage caused by tornadoes and aircraft, fire and flood;
  - (ii) fair wear and tear, wilful damage to the Material or the Coating System or damage resulting from any negligence, act or omission of any person other than Akzo Nobel;
  - (iii) structural failures of, defects in (including failure to meet relevant building standards whether industry standards, standards specified in writing by Akzo Nobel or otherwise) or external impact to the Material or the Coating System, including the supporting structure to which the Material or the Coating System has been applied or attached and/or any installation to which the Material or the Coating System was not applied;
  - (iv) any alteration or repair of the Material or the Coating System or the supporting structure to which it has been applied (unless such alteration or repair so long as Akzo Nobel technical requirements have been met);
  - (v) any change of use of and/or alteration of the Material or the Coating System unless Akzo Nobel was notified of and approved such change of use;
  - (vi) discharge of any chemical substance on to the Material or the Coating System or the supporting structure to which it was affixed; or
  - (vii) [failure to maintain the Material or Coating System in accordance with Akzo Nobel's care instructions as notified to the Company from time to time.]

### Limitations

- (d) The Company agrees that its use of the elements of the Coating System is made in reliance solely upon this Guarantee and not upon any other written or oral representation of Akzo Nobel. This **Guarantee** cancels and supersedes all other warranties and statements of performance (whether express or implied) made in the past or to be made in the future by Akzo Nobel for or in relation to elements of the

Coating System, unless such statement is made in writing as an express amendment of this document.

## 5.2 Period of Guarantee

This **Guarantee** shall only apply to Coating Systems which are applied to Materials by the expiry date specified on the label attached to the container in which the element of the Coating System concerned was supplied.

### General Provisions

- (a) There shall be no waiver of this **Guarantee** either where the Company is not required by Akzo Nobel to comply strictly with its obligations or where Akzo Nobel takes steps for the Company's benefit which exceed the express scope of this **Guarantee** and no such action shall constitute an alteration of the rights of Akzo Nobel or the Company.
- (b) This **Guarantee** is provided only to the Company. It is not transferable or assignable to any other party.
- (c) In the event of any inconsistency between the provisions of this **Guarantee** and the provisions of the other terms and conditions governing the sale and purchase of components of Coating Systems from time to time (whatever their respective dates) the provisions of this **Guarantee** shall prevail.

- 5.3 This **Guarantee** shall apply to products supplied by Akzo Nobel for the purpose of rectifying Defects but only for the remainder of the original Applicable **Guarantee** Period and subject to all the terms, exclusions and limitations set out in this **Guarantee** Agreement.

## 6 Notices

- 6.1 Any notice to be given under this Agreement shall be validly given if left at or hand delivered to or sent by first class post to the address of the party concerned set out the head of this Agreement or such other address as that party may have notified to the other, in accordance with the terms of this clause for such purpose.
- 6.2 Any notice served in accordance with clause shall be deemed to have been received at the time of hand delivery or at the time which it is left at the premises concerned, or 2 days after posting in the case of service by post.

## 7 Set-off

Where any sum is owing under this **Guarantee**

Agreement or under any other agreement between Akzo Nobel and the Customer or any of their respective group companies, it shall be permissible to set off any such sum against any other such sum.

## 8 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with English law and each of Akzo Nobel and the Customer agrees to submit the jurisdiction of the English Courts.

**In Witness** whereof each of the parties has caused its representatives to sign this Agreement to signify its agreement to the terms set out herein.



## Schedule

### Coating Systems

#### Pre-treatment

- Sikkens Kodrin WV 456 End Grain Sealer must be applied with all coating systems following base stain / primer application.

#### Required Product Information and Application Details

##### Opaque Coating Systems

#### **Preservative**

Sikkens Cetol WV882 Preservative – Spray, Flowcoat, Dip or Brush

#### **Primers**

Akzo Nobel/Sikkens AD024 Isolation Primer – spray apply (air assisted airless spray) to min 120 micrometers wft per coat

#### **Finishing Coats**

Sikkens Rubbol WF378 (Gloss) or Sikkens Rubbol WF380 (Satin)  
- Spray apply 2 coats (air assisted airless spray) to 150micrometres wft per coat

**NOTE: The choice of finish should be determined by preferred sheen/gloss level.**

##### Translucent Coating Systems

#### **Preservative**

Sikkens Cetol WV882 Preservative – spray, flow coat, dip or brush

#### **Base Stain**

Sikkens Cetol WP 560 - dip, flow coat or saturate spray.

#### **Finishing Coats**

Sikkens Cetol WF 955 (PowerFeed™)  
- spray application 2 coats (air-assisted airless spray) to min 150 micrometres wft per coat

**Information correct at time of print – 24<sup>th</sup> November 2009**

- **To enable the Sikkens joinery team of Akzo Nobel Industrial Coatings Limited to fulfil their customer service commitment, periodic visits will be made to the Joinery**

**Manufacturers' premises to inspect and advise on all aspects of coating application, drying and storage.**



## Schedule

### Specifications

1 All Materials to which the Coating System is applied shall meet the requirements of BS EN 942:1996 and BS 644: 2003.

2 It is a firm recommendation that the Materials shall have no protruding sill sections. Wherever possible protruding timber sill sections should be eliminated. However, to meet specific client design requirements timber sills may be necessary. In this event sills should be manufactured to meet the following requirements:

The selected timber of the sill section should be of a naturally durable timber species and must meet the requirements of BS EN 942: 1996 Table NA1 - Suitability for use - reference SW.

The protruding timber sill section should have a maximum protrusion of 95mm from the frame itself, and have an even continual slope away from the bottom of the frame of not less than 1:8. A capillary groove should be included within the design of the underside of the sill, the minimum width and depth of the groove should be 6mm, and should be positioned a minimum of 12 mm from the front edge. The front edge of the sill must be finished with a minimum 3mm rounding and a minimum finished thickness of 25mm.

3 All exposed edges on the Materials shall be rounded to 1.5 mm: a 3mm rounding shall be used where practicable.

4 The Coating System shall be applied in strict accordance with Akzo Nobel's instructions as varied from time to time.

5 Windows must be glazed in accordance with BS 6262 and BS 644: 2003 Annex B.

6 Wherever possible the bottom bead shall be vented aluminium.

7 All joinery is to be installed and soundly fixed in accordance with BS 644: 2003 Annex D and any instructions of the manufacturer.

8 All joinery shall be inspected by the Quality Control Manager to ensure complete compliance and satisfaction. The inspector shall sign the guarantee document as provided by Akzo Nobel confirming compliance.

9 The guarantee document must be returned to Akzo Nobel within 28 days of the Supply Date.

#### 10 MAINTENANCE PRODUCT INFORMATION

**Within the terms of the guarantee, all maintenance cycles and brush applied products for maintenance must be specified to be compatible and approved by Akzo Nobel Industrial Coatings Limited.**

11 All materials must be stored in accordance with Akzo Nobel's guidelines.

Signed by ) .....  
duly authorised for and on behalf of ) .....  
**Akzo Nobel Industrial Coatings Limited** ) .....

Signed by ) .....  
duly authorised for and on behalf of ) .....  
**Swift Joinery** ) .....

